

Punjab-Haryana High Court

Poonam Kaur vs Jagjit Singh on 26 May, 2005

Equivalent citations: AIR 2005 P H 295, II (2005) DMC 634, (2005) 141 PLR 133

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Bench: A K Mittal

JUDGMENT Ajay Kumar Mittal, J.

1. This is an appeal by the wife under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") against the judgment and decree dated 26.8.1997 passed by the learned Additional District Judge, Chandigarh, whereby petition of the respondent-husband for dissolution of marriage by a decree of divorce under Section 13(1)(i-a) of the Act on the ground of cruelty had been allowed.

2. This is rather an unfortunate case where matrimonial alliance between the parties settled by way an advertisement in the newspaper, though made a good start but ran into rough weather just within a period of less than two years thereafter. The budding couple, soon after the marriage, which was solemnised on 9.8.1992 at Chandigarh as per Sikh rites through Anand Karaj in the presence of respectables and relatives of the parties, entertained high hopes and aspirations and they were not only hoping but were anxiously looking forward to a life full of mirth and merriment, mutual love and devotion. They were even blessed with a daughter, named Jaspreet Kaur on 29.4.1993. But the circumstances took an ugly turn and dragged the couple to the door of the Court. Initiation, however, was made by the husband, respondent herein who approached the court by filing a petition for dissolution of marriage.

3. The woeful tale of the couple which surfaced on the record in the shape of facts is somehow lengthy, which however, can be summarised in the following manner.

FIRST THE HUSBAND'S ALLEGATIONS IN THE PETITION Soon after the marriage, the parties lived together as husband and wife in the joint family. After the appellant became pregnant in the month of September, 1992, she started showing gestures of indifference, disrespect and occasionally misbehaving. She started insisting upon the respondent to walk out of the joint family. This demand of the appellant sent waves of shock not only to the respondent but his parents as well especially when, as per respondent's case, it had been clear to the appellant before hand that she will have to raise in the joint family. When the respondent and his family did not yield to the wish of the appellant, she became rude, short-tempered and more disrespectful to the respondent and his parents. The appellant left for her parental house at Ludhiana in the first week of March 1993 after taking maternity leave despite the fact that the respondent had made all possible arrangements for the expected delivery of the appellant. After the birth of a female child, the appellant returned to her matrimonial home and again started insisting the respondent to set up his residence separately from his parents, which the respondent could not afford being deeply attached to his parents. The situation was aggravated more when the appellant stopped taking any interest in the household work and listening to anybody's advice. Not only this, she even started ignoring the newly born child. Even the father of the appellant, instead of advising the appellant, used to instigate her for forcing the respondent to have a separate home. As and when the respondent visited his in-laws

house, he was shabbily treated and humiliated.

On 12.9.1993, it is further stated in the petition, the parties came back from Ludhiana, but the appellant created a scene at the Bus Stand at Chandigarh when she refused to go to the respondent's parents house. This incident created a mental cruelty to the respondent. This incident was reported by the appellant to her father on phone who along with some bad elements reached respondent's house on 13.9.1993 to criminally intimidate the respondent and his family. On 15.9.1993, father of the appellant took the latter and the newly born child to Ludhiana for two/three days but the appellant did not return and got her leave extended. The father of the appellant then started making a number of complaints to the police authorities against the family of the respondent. On investigation, the allegations were found to be false and ultimately, the father of the appellant had to tender a written apology on 13.10.1993 before the police, with an assurance that the appellant will remain respectful to the respondent and his family. Still there was no change in the behaviour of the appellant. The appellant sent some office-bearers of the Employees Union of her office to the house of the respondent who espoused the cause of the appellant. The appellant even dared to send false complaints to the office of the respondent with a view to tarnish his reputation and the reputation of his family.

The respondent ultimately yielded to the pressure of the appellant and he started living in a separate house with the appellant w.e.f. 1.3.1994 with the hope that good sense would prevail upon the appellant and peace would return to the family. The things did not improve even then and the appellant became more violent to the respondent and started maltreating him and ignoring the child upon which the respondent was left with no choice but to himself take care of the child.

On 5.3.1994, the appellant and the respondent went to a Bank for getting a locker, but the appellant started quarreling with the respondent in the presence of the bank officers on the pretext that she would get locker in her own name alone. Faced with these circumstances and the continuing instances of cruelty of the appellant, the respondent's life had been virtually turned into a burning hell which impelled him to get rid of the appellant by filing a petition for dissolution of marriage.

REPLY OF THE WIFE TO HUSBAND'S ALLEGATIONS While admitting the relationship between the parties, the appellant totally denied that any cruel treatment had ever been meted out by her to the respondent or to any of his family members. She rather put the entire blame on the respondent and stated that it was in fact she, who was treated with cruelty by the respondent and his parents and she was given beatings many a times. All the gold ornaments, valuable articles and the clothes etc. worth Rs. 2.5 Lacs, which were given by appellant's parents at the time of marriage, were taken away from her and the same are in custody of the mother of the respondent. The appellant was slapped by the respondent just after two days of the marriage, on the ground that since colour television was given by her parents, her parents should also pay the cable connection charges. Prior to her marriage, the appellant was having a Moped and a gas cylinder and the respondent asked her to bring the same to his house and when she showed her reluctance, the respondent abused her and her parents in filthy language and gave beatings to her in the third week of August, 1993. On pressure being put on her, she even brought the Moped and the gas cylinder, but even then the behaviour of the respondent and his parents did not improve. Picking up quarrels and giving abuses

by the respondent and his family members to her became a routine feature. It was further stated that the appellant was ready and willing to stay on the joint family but daily taunting by the respondent and his parents created hurdles in her peaceful life and on that account she suffered mentally and physically. It was denied that the appellant had ever asked for separate residence. Explaining further the conduct of the respondent, it was stated that the respondent and his parents sent her to her parents house for the purpose of delivery as according to them, as per custom, the first delivery should take place at the house of her parents. The factum of birth of female child was admitted and it was stated that the entire expenses on the delivery were borne by the parents of the appellant. When the appellant brought the newly born child to respondent's house, she was taunted by the mother of the respondent for not having brought articles which as per custom are given at the birth of the child. The incident that took place on 12.9.1993 at the Bus Stand, Chandigarh was admitted but it was explained that while leaving for Chandigarh from Ludhiana, her father had given some tonics and medicines to her but the respondent picked up a quarrel at the Bus Stand on the ground that her father had considered himself to be rich by giving such like medicines. The appellant denied that Gurbal Singh Advocate and M.K. Bhatia, were present at the Bus Stand at the time of said occurrence. It was further stated that one Hakim Singh Assistant of the Panjab University had saved her from the respondent at the Bus Stand and on a telephonic call given by someone, the police reached at the Bus Stand and the police officials rebuked the respondent. This incident gave a mental shock to the appellant. It was denied that any bad elements had come to the house of the respondent on 13.9.1993 in a Jeep. The father of the respondent threatened the appellant many a times that since he and his son (respondent) were working in the High Court and have influence there, they would procure false certificates and would snake out a case for divorce.

The appellant further stated in her reply that even after taking of separate residence by the respondent of his own, she was maltreated by the respondent on the ground that she had got separated him from his parents. On 11.3.1994 when appellant returned from her office, she found that the respondent had left the rented house along with all belongings after conveying the landlady that he could no longer reside with the appellant and since then, they have been living separately from each other. In nutshell, the case of the appellant is that she had never misbehaved or maltreated the respondent with cruelty and rather she herself was the victim of cruel treatment at the hands of the respondent and his family members.

4. The respondent filed replication controverting the pleas taken in the reply and reiterating those taken in the divorce petition. The rival contentions of the parties gave rise to the following issues:-

1) Whether the respondent has treated the petitioner with cruelty as alleged by him?

2) Relief.

5. After the parties led evidence, written statement was got amended with the leave of the Court whereupon the following two additional issues were also framed:-

1-A Whether the petitioner is taking advantage of his own wrongs as alleged in the written statement, if so, to what effect? OPR 1-B Whether the cruelty on the part of the respondent, if any,

stood condoned by the subsequent acts and conduct of the parties? OPR

6. Both the parties led their oral as well as documentary evidence in support of their respective contentions to which reference would be made at the appropriate stage.

7. Shri G.S. Grewal, learned Senior Counsel appearing for the appellant while assailing the judgment of the trial Court submitted that the husband in the divorce petition had referred to two instances. The first instance relates to occurrence on 12.9.1993 at the Bus Stand of Chandigarh when the wife returned from Ludhiana from her parental house and immediately thereafter on 13.9.1993 the very next day when the father of the wife along with her brother, his father-in-law and five or six gunda elements came in a jeep to the house of the husband and threatened them with dire consequences in case they did not mend their ways and behaviour towards Poonam-appellant. The learned counsel submitted that the trial Court had taken this to have been proved on the testimony of two witnesses, namely, Shri Gural Singh Advocate and Shri M.K. Bhatia, Superintendent who happened to be on the bus Stand on 12.9.1993 when the alleged occurrence is stated to have taken place and on the basis of testimonies of Randhir Singh Kochhar (PW12) and Shri O.P. Puri (PW15), the incident of 13.9.1993 was held to have been proved. He referred to the statements of these witnesses and attempted to project that the testimony of these witnesses could not be relied upon as the same were of interested witnesses who were known to the father of the husband and had deposed in order to help him in proving the case. The testimony of these witnesses is not credible as Gural Singh and M.K. Bhatia have been planted whereas they were in fact not present on 12.9.1993 at the bus stand. Besides the above, the two other occurrences which were the cause for cruelty are that: firstly the wife had forced the husband to have separate residence from his parents and in pursuance of it, the husband took separate residence on 1.3.1994, but could not continue and had to leave the house on 10.3.1994 and secondly the wife was always missing from the office whenever the husband visited her in her office. According to the learned counsel, both the instances do not stand proved from the evidence on record. The story put forth by the husband is totally false and more persuasive evidence was required to be produced rather than only probability to establish cruelty, as cruelty has a touch of criminality and should affect mentally as well.

8. According to the learned counsel, the wife never asked for separate house and in fact it was a plan on the part of the husband to get rid of his wife that he took separate residence and shifted therein on 1.3.1994 and then left the same on 10.3.1994 without any provocation by the wife. In fact, nothing had happened during those ten days. Moreover, the story regarding creating of fuss while opening of locker on 5.3.1994 is also false as the wife never operated the locker and the question for creating any fuss on 5.3.1994 thus never arose. The learned counsel laid great stress that the wife is still willing to live in his house and in a joint family system and the evidence produced by the husband is not sufficient to establish cruelty.

9. According to learned counsel the alleged acts of 12.9.1993 and 13.9.1993 stood condoned when the couple took separate residence w.e.f. 1.3.1994 and had started residing there and there being no allegations of cruelty thereafter by the husband, no cause of action accrued to the husband to file the present divorce petition. Learned counsel also laid stress on the testimony of RW2 Satinder Singh and urged that the evidence produced by the husband is belied on the statement of the said witness.

He also relied upon witness Mohinder Kaur RW1 in support of wife's case. Further continuing with his submissions, the counsel emphasised that the present case is not of physical cruelty but is a case of mental cruelty and in fact, there has been no mental cruelty and no allegations have been levelled or pleaded and evidence led to show that there is mental cruelty. The husband is taking advantage of his own wrong and the quarrel had been on petty matter which shall not amount to cruelty. He placed reliance on Palwinder v. Saroj, (2003-3)135 P.L.R. 505 and Shyam Sunder Kohli v. Sushma Kohli alias Satya Devi, in support of his submissions.

10. Shri L.M. Suri, Senior Counsel refuting the submissions of the wife, strenuously argued that the bond of happy marriage between the husband and the wife is not created and there were many more instances of indifferent and cruel behaviour of the wife and it is the cumulative effect of all the instances which lead to one conclusion that the wife had been treating the husband with cruelty. He placed reliance on Praveen Mehta v. Inderjit Mehta, (2002-3)132 P.L.R. 492 (S.C.); Dr. N.G. Dastane v. Mrs. S. Dastane, ; G.V.N. Kameswara Rao v. G. Jabilli, 2002(2) R.C.R. (Civil) 15 and Vijay Kumar Ramchandra Bhate v. Neela Vijaykumar Bhate, . According to learned counsel, the entire problem has emanated due to the father of the wife and he had abstained from appearing as a witness whereas one Shri Hakam Singh who is friend of father of the wife had been produced. The levelling of false allegations in the F.I.R. and also on various other occasions also amounted to cruelty according to the learned counsel. Further the agony of the husband was aggravated by the wife by sending false reports every six monthly to the High Court where he was working. For this proposition he referred to Kotti Veera Venkata Padmavathi v. Kotti Sriram, 2003(2) H.L.R. 167 and Paramjit v. Ranjit Singh, (1994-3)108 P.L.R. 232. He countered the submission of Shri Grewal and submitted that the husband made efforts to patch up the dispute and in that attempt he took separate residence on 1.3.1994, but his effort ultimately proved to be futile as the conduct and behaviour of the wife did not result in retribution. He referred to oral as well as documentary evidence in support of his submission.

11. Learned counsel further submitted that the stand of the husband is established from the fact that on 13.10.1993, written apology had been tendered by the father of the wife to the police regarding the falsity of demand of dowry etc. by the husband and by the wife that she would pay full respect to her mother-in-law and father-in-law and she would live amicably with her husband. He also submitted that they have been living separately now for ten years and six months and more than seven years after the passing of the decree.

12. I have heard the learned counsel for the parties and have perused the record with their able assistance.

13. The husband has examined Shri M.K. Bhatia, as PW3 and Shri Gurpal Singh, Advocate as PW16 besides appearing himself as PW18 in order to prove the incident of 12.9.1993. PW3 M.K. Bhatia who is colleague of Jagjit Singh husband as well as his father, while appearing as a witness on 18.5.1995 has deposed that about two years back when he was passing through the round about of the local Bus Stand, he saw crowd there and stopped. He found there that a lady was quarreling with Jagjit Singh and was asking him to take her to Ludhiana. He further deposed that one Advocate was also present there but he could not remember his name. He had advised Jagjit Singh and the lady to

go to the house and to sort out their differences there. The husband was taken by him to the house and the lady was taken by the Advocate who dropped them at the house. During cross-examination he admitted that he knew the husband and his father. He further deposed that on his asking they had told him that they have come from Ludhiana. Gural Singh Advocate (PW16) who is the other witness to the occurrence of 12.9.1993 has corroborated the testimony of Shri M.K. Bhatia (PW3). He has deposed that on 12.9.1993 he saw the husband and the wife standing near round about of the Bus Stand on the side of Sector 18 near Tir Nursing Home and he saw the husband weeping and requesting the wife to go to the house. She was insisting that she will accompany him if he is ready to live separately in the house. He has further deposed that Poonam was all agitated and speaking loudly. He then requested her again and again that she should go to home and the entire matter will be discussed there. Then Poonam was made to sit on his scooter and Jagjit Singh sat on the scooter of Shri M.K. Bhatia and they dropped them at the house of the husband. These witnesses were cross-examined and their testimony could not be shaken. It cannot be said that their testimonies are not trustworthy for the reason that they were known to the husband and his father. The testimony of the husband (PW18) also supports his case.

14. As against this, the wife herself appeared in the witness box and deposed that on 10.9.1993, she along with her husband and the child went to Ludhiana to the house of her parents and returned on 12.9.1993. She further deposed that in fact the husband had quarreled with her as he had thrown the medicine and tonic from the bus which was given to her by her parents and the husband had stated that she should return to Ludhiana and that he shall not take her to his house. She further deposed that this incident had taken place at Chandigarh Bus Stand and according to her, Hakam Singh also happened to be present there. The wife examined Hakim Singh RW3 but his testimony cannot be relied upon as he has tried to put altogether different story from the one placed by the wife. He deposed that he saw Jagjit Singh beating one girl. He further deposed that his incident had taken place inside the bus stand at the platform. He further deposed that after the interference of the police, it transpired that they were husband and wife. In his cross-examination he has admitted that he knew Narinder Singh Marwaha father of Poonam for the last about 8-10 years and had family relations. It is for this reason that he has tried to help the wife. Therefore, on the basis of evidence on record, the incident of 12.9.1993 as pleaded by the husband stands proved.

15. In order to prove the incident of 13.9.1993, the husband examined two neighbours Shri Ranbir Kochhar as PW12 and Shri O.P. Puri as PW15. Besides the said two witnesses, the husband appeared himself as PW18. PW12 Ranbir Kochhar has deposed that he knew the husband and his entire family for the last more than 12 years and they are residing just opposite to his residence. He further deposed that when he visited the house of the husband, he heard hue and cry raised there and he heard Poonam giving filthy abuses to her mother-in-law, father-in-law and husband and was saying that she will get all of them killed. He further deposed that in September, 1993 between 5.00 and 6.00 P.M. he was present in his house and heard hue and cry and came out and saw one jeep parked in the street and about 7-8 persons were found standing in the street. They were giving filthy abuses to the respondent and his father. Poonam started shouting and behaving abnormally. He further deposed that he called Jagjit Singh and then brought Dr. Gupta from Sector 19 and he also did not find any ailment being suffered by Poonam. Thereafter, an Ambassador car came there and Poonam went in that Car. He further deposed that next morning Poonam returned and he heard that some

compromise has been effected at the instance of police between the parties. Thereafter, some differences prevailed between the parties and Poonam was insisting for living separately from the joint family. He further deposed that in March, 1994 the parties took one house on rent in Sector 20. He also deposed that after one month he was told by Jagjit Singh that he was having threats from the side of his wife to be killed and he was not to reside with her.

16. Similarly, PW15 O.P. Puri has also deposed that he knew Jagjit Singh, his family and his wife Poonam. He further deposed that one day he and his wife were present in the house of Jagjit Singh and they heard Poonam abusing her in-laws in Punjabi and on his enquiry, he was told by the father of Jagjit Singh that Poonam wanted to get separated from the joint family. He further deposed that in September, 1993, 7-8 persons came in a jeep, quarreled with Jagjit Singh and his family. He also deposed that in March, 1994, Jagjit Singh and Poonam left the house to reside in a separate rented house.

17. The husband as PW18 has extensively supported his case in order to establish the incident of 13.9.1993, the husband also examined another neighbourer T.S. Saini (PW14) to prove the behaviour of the wife towards the husband and her in-laws. He has deposed that Poonam used to quarrel with the husband and his family members. She had been insisting for separate residence.

18. The wife in order to prove the falsity of the case of the husband has examined Satinder Singh RW2 and had herself appeared as RW4. RW2 Satinder Singh is the father-in-law of Poonam's brother. He has deposed that on 13.9.1993 at about 3.30/3.45 A.M. he received a telephonic message from his daughter Jaswinder Kaur and son-in-law Gurbinder Singh from Ludhiana that Poonam has been beaten by her in-laws and that I should reach bus stand Chandigarh, his son-in-law Gurbinder Singh and his father Narinder Singh met him and they reached in Kothi No. 2560, Sector 19-C, Chandigarh. He further deposed that they were not allowed access inside the house and not allowed even to see Poonam. He further deposed that father of the husband told that Poonam was a bit nervous and that her father should take her along with him for about a week and they accordingly took Poonam with them on 15.9.1993. He further deposed that on 20.9.1993 he along with Narinder Singh Marwaha reached Chandigarh. He further deposed that he told Narinder Singh that he alone will go to the house of the husband to discuss the matter. But the husband and his father did not hear him and stated that they will not keep Poonam in their house. Similarly, the wife has also supported her case. RW2 has given an altogether different version than the case pleaded by the wife and from the evidence of the appellant-wife. Moreover, father and brother of the wife who were material and important witnesses have not been examined for the reasons best known to the wife.

19. The evidence produced by the parties amply proves that the occurrence on 13.9.1993 as alleged by the husband also stands established.

20. From the above, it now emerges that the incidents of 12.9.1993, 13.9.1993 and also that the parties had taken a separate residence on 1.3.1994 and that they had also separated within ten days thereafter on 10.3.1994 as they could not pull on together stand proved. In the facts of the present case, it is to be seen whether the acts of cruelty as contemplated under Section 13(1)(a) of the Act

stood proved against the appellant-wife. The equally important question which requires adjudication in this case is whether the act of cruelty if stood proved against the wife, whether the same was condoned by the husband or not under the provisions of the Section 23(1)(b) of the Act. Before deciding the above questions, it would be apt to discuss the legal position under the Act. Section 13(1)(i-a) of the Act reads as under:-

"13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty."

21. The cruelty has not been defined in the Act and the meaning which it derives is as a result of judicial pronouncements by various Courts. The cruelty has not been restricted only to physical cruelty. It embraces within its ambit the mental cruelty as well. The judicial pronouncements have held that the cruelty has to be of such a kind that the spouse who complains of the alleged mental or physical cruelty finds himself or herself unsafe and insecure to live under the same roof with the other spouse. The learned Single Judge of this Court in *Shri Amrik Singh P.C.S. v. Shrimati Surjit Kaur*, 1975 All India Hindu Law Reporter 44 in para 6 has held as under:-

"To decide as to whether the case against the respondent wife for causing such cruelty to the petitioner as to entitle him for judicial separation is made or not, one has to first inform oneself as to the meaning and ambit of the expression cruelty. The expression cruelty has not been defined in the Act and whatever it has come to mean, is as a result of judicial decisions handed down by the Courts. All authorities, however, are unanimous in asserting that the expression cruelty is not confined to physical violence but conceives of mental cruelty as well. But cruelty has to be of such a kind as to make the complaining spouse's continued association under the same roof with the other spouses' unsafe for his mental and physical health."

22. The Apex court in *Parveen Mehta's case* (supra) while considering the meaning of the expression cruelty as a matrimonial offence, after considering the various pronouncements on the subject in paras 14 and 21 had laid down as under:-

"Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

xx xx xx xx XX XX XX"

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

23. In Vijay Kumar Ramchandra Bhate's case (supra) for constituting mental cruelty, the Apex Court emphasised that neither the period nor duration for any particular period nor the numerical count of events for constituting mental cruelty are the essential requirement and it depends upon the facts and circumstances of each case.

24. It is also an admitted fact that the wife had filed a criminal complaint to Inspector General of Police, Union Territory Chandigarh against the husband and his family members. A copy of the complaint is Ex.P13 on the file. The complaint was investigated by the Deputy Superintendent of Police, who after investigation had recommended the filing of the said complaint as according to him from investigation, no cognizable offence was made out. A copy of the order of the D.S.P. is Ex.P14 on the record the written apology dated 13.10.1993 was tendered by appellant's father which had been given before the Police wherein it was admitted that the complaint which was made against the husband was not true to their knowledge and the allegations which were levelled in the complaint. F.I.R. and letters etc. wherein the demand of dowry and other incident mentioned against the husband and their family members were not correct. The learned Single Judge of this Court in Smt. Krishna Sarbadhikary v. Alok Ranjan Sarbadhikary, 1985(1) H.L.R. 759 and Parmajit's case (supra) has laid down that the false complaints by the wife for the commission of criminal offence against the husband who was in Government Service creates apprehension in the mind of the husband that continued co-habitation with his wife maybe harmful and injurious and gives reasonable ground for the husband to claim divorce and it amounts to cruelty.

25. It is the admitted case that the criminal proceedings filed by the wife against the husband are still pending. The plea of the wife that she is still prepared to live with the husband is only an effort to frustrate the claim of the husband. Needless to express if the wife was honestly and genuinely interested in rehabilitating her matrimonial home the first effort would have been to withdraw the complaint and not to pursue the same.

26. In the present case the evidence as produced by the husband leads to only one conclusion that the attitude and behaviour of the wife showed total disrespect towards the husband and the members of his family and unconcealed dislike for all of them and that this resulted in mental agony and cruelty to the husband.

27. The next core question which would require attention of this Court is whether the acts of cruelty which stands proved against the wife were condoned by the husband in the wake of the fact when the husband took separate residence on 1.3.1994 and started living with his wife separate from his parents.

28. As to what constitutes condonation as envisaged under Section 23(1)(b) of the Act has nowhere been elaborated under the Act. Condonation is a conditional waiver of the right for the injured spouse to take matrimonial proceedings and it does not amount to forgiveness in the ordinary parlance. Normally condonation carries with it a rider that the injury shall not be repeated. Condonation cannot be taken to be an absolute and unconditional forgiveness. Therefore, in case the matrimonial offence is repeated even after an act of condonation on the part of the spouse, it gets revived on the commission of subsequent act resulting in matrimonial disharmony. The spouse who has earlier condoned the cruelty in order to bring harmony in the matrimonial alliance cannot be put at a disadvantage due to unadjustable and cruel behaviour or a commission of marital offence by the erring spouse.

29. The Division Bench of Calcutta High Court in *Santana Banerjee v. Sachindra Nath Banerjee*, 1990(1) H.L.R. 419 while interpreting condonation laid down that cohabitation at times and or living together in an attempt to retain the fission in the relationship of husband and the 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. The learned Single Judge of Jammu and Kashmir High Court in *Lalit Mohan v. Tripta Devi*, 12 1990(1) H.L.R. 583 had also laid down the aforesaid principles regarding condonation of acts of cruelty. The learned Single Judge of this Court has very succinctly and elaborately summarised the law regarding condonation in *Amrik Singh's case* (supra) in para 27 and has observed as under:-

"There is no dispute with the proposition that if there has been condonation of the alleged act of cruelty, then the provisions of Section 23(2) of the Hindu Marriage Act are a complete bar to the granting of relief prayed for. But the question arises: Can the act once condoned not be revived by a fresh act of cruelty? That it can be, has been held by a Full Bench of Nagpur High Court reported in *K.J. v. Smt. K w/o K.J. and Anr.*, A.I.R. 1952 Nagpur 395 as also in *P.M. Isaac John v. Mrs. Beatrice John and Anr.*, (Full Bench) and *Dina Dinshaw Merchant v. Dinshaw Ardeshir Merchant*, A.I.R. 1970 Bombay 341. That it could not have been otherwise is clear even from a common sense view. In the nature of things, neither it would be conclusive for a married life nor it is thinkable that the moment a spouse commits an act which constitutes cruelty, the other spouse should rush to the Court for relief. A normal married couple would naturally make allowance for difference of temperament and allow time in order to stabilize the marital relations and would thus ignore that misbehaviour of the other spouse in the hope that things would improve with the passage of time.

Where the mental cruelty is said to have been caused by constant nagging, taunts, gestures full of disrespect towards the other spouse and towards those whom he or she either out of final relationship or friendship greatly respects, it is only when the misconduct of the other spouse does not show any sign of improvement and a stage is reached where the last such taunt, nagging or gesture proves the proverbial last straw and the spouse throws up the sponge, gives up the hope that time would mend the matters and knocks at the doors of the Court."

30. In the present case, the taking of separate residence on 1.3.1994 and shifting therein did not amount to condonation of previous acts of cruelty as within the short span of ten days, the conjugal relationship between the parties broke irretrievably to the extent that they have never cohabited together thereafter. The taking of separate residence on 1.3.1994 was an attempt on the part of the husband to rehabilitate the estranged matrimony between him and the appellant but there being no mend in the behaviour and attitude of the wife, the position as existed prior thereto continued which resulted in the complete breakdown of matrimonial bond between the parties. The sequence of events would show that this would not amount to condonation of acts of cruelty, yet even if it is taken to be so, then also, the same stood revived by the act and conduct of the wife as the same was conditional, dependant upon the behaviour of the wife.

31. It is not in dispute that irretrievable breakdown of marriage is not one of the grounds as enumerated in Section 13 of the Act on the basis of which the parties to the matrimonial discord can be granted divorce by the Courts.

32. The learned Single Judge of this Court in Smt. Swedit Kaur v. Mohan Singh, 2004(2) R.C.R. (Civil) 15 in view of the authoritative pronouncement in Parveen Mehta's case (supra) has held that though irretrievable break down of marriage is not a ground for divorce but is a factor to be kept in mind as to whether marriage should be dissolved or not. Applying the aforesaid principle to the present case wherein the parties have been living separately for over ten years and six months and even seven years after the grant of decree of divorce by the trial Court the only conclusion is that it would not be proper to keep the matrimonial bondage between the parties and it would be rather appropriate to dissolve the same by a decree of divorce.

33. Reliance of the learned counsel for the appellant on Palwinder's case (supra) and Shyam Sunder Kohli's case (supra) is of no help to the appellant. The learned Single Judge of this Court in Palwinder's case (supra) was considering a case where the divorce was sought on the ground of cruelty by alleging that the wife was not cooking meals and did not wash clothes and was a lady of quarrel-some nature and used to quarrel on petty matters. It was in those facts that this Court came to the conclusion that such prevalence issue shall not amount to cruelty on the part of the wife and shall not entitle the husband to claim divorce on that count. In Shyam Sunder Kohli's case (supra), the Apex Court on the basis of facts of that case came to the conclusion that it was the husband who had forced the wife to leave the matrimonial home and no attempt was made by the husband to get her back and the ground of cruelty on the basis of which the husband had sought divorce was not substantiated and had made baseless allegations against the wife and the Apex Court on those facts had held that the husband cannot be granted the divorce. The facts of Palwinder's case (supra) and Shyam Sunder Kohli's case (supra) are distinguishable whereas in the present case on the basis of

evidence and the material produced on the record, the husband has been able to substantiate that the wife had acted in a manner in which husband finds it difficult to continue with the matrimonial alliance with the wife and leads to reasonable apprehension in his mind that it would be harmful and injurious for him to live with his wife. The findings of the trial court on issues No. 1 and IB are thus affirmed.

34. In view of the above, I find no merit in the appeal and accordingly the same is hereby dismissed.

35. Before parting, it needs to be noticed that the husband has filed an application viz. Civil Misc. Application No. 14335-CII of 2004 under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for production of additional evidence by way of which the husband wishes to place statement of Satinder Singh Johar (RW2) recorded by the Judicial Magistrate, 1st Class, Chandigarh on 25.8.2001 as PW3 pertaining to the incident dated 13.9.1993. The appellant has also filed an application being Civil Misc. Application No. 2484-CII of 2005 under Section 151 of the Code of Civil Procedure for referring the letter dated 9.9.2004 written by one Manpreet Suri, Senior Citizen of Community Centre to this Court to some investigating agency for investigation to find out the real culprits and for booking them for whatever offence they have committed,

36. In view of the fact that the appeal filed by the appellant-wife has been dismissed on the basis of evidence on record, there is no need to go into the application filed by the husband for producing additional evidence. Still further, the application which has been filed by the wife is only regarding the investigation which has no bearing on the decision of the case.

Both the applications stand disposed of accordingly.

The parties to bear their/own costs.