

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

3. The warp and woof of the case of the husband could pithily and precisely be portrayed thus:

The marriage between the parties herein took place on 20.02.1997 as per the Hindu Rites and Customs. During the wedlock, they gave birth to two female children. The wife is an handicapped lady due to polio, even before such marriage. Both are employed. The wife started disrespecting the husband and indulging in giving mental torture to him and treated him cruelly. She was in the habit of leaving the matrimonial home at her whims and fancies. She also lodged a false complaint with the police as against the husband and his parents and the criminal case ended in acquittal. Accordingly, he prayed for divorce.

4. Per contra, denying and disputing, refuting and impugning the averments/allegations in the petition filed by the husband, the wife filed the counter with the averments thus:

The husband was a part time worker in Karur Municipality at the time of his marriage and till he got confirmation in his job, the relationship between the husband and the wife was cordial. Once, he became permanent in his job, he started harassing the wife so as to get rid of her and to marry some other girl. She would also allege that the husband and his parents beat her black and blue and injured her. Accordingly, she prayed for the dismissal of the divorce petition.

5. The trial Court framed the relevant issue and during trial, the husband examined himself as P.W.1 and Exs.A.1 to A.6 were marked and the wife examined herself as D.W.1 along with D.W.2 and no exhibits were marked on the side of the wife.

6. Ultimately, the trial Court granted divorce, whereupon the first appellate Court confirmed the judgment and decree of divorce granted by the trial Court. However, during the first appellate stage, the following documents were filed:

Exhibits Dated Documents Ex.R.1 05.03.2003 Certified copy of the F.I.R.

Ex.R.2 21.08.2003 Certified copy of the charge sheet against the petitioner. Ex.R.3 ...

Rough Sketch Ex.R.4 23.02.2003 Certified of wound certificate of the respondent/wife. Ex.R.5 ...

Certified copy of the Compromise petition in C.C.No.606 of 2003. Ex.R.6 23.02.2004 Certified copy of the order of J.M.No.2, Karur, in the compromise petition. Ex.R.7 23.03.2004 Certified copy of the order of the J.M.No.2, Karur, in C.C.No.606 of 2003. The first appellate Court, it appears, relied on those documents as Exhibits 1 to 7 on the side of the wife and the fact remains that no documents were marked on the side of the wife before the trial Court and as such, the aforesaid documents shall be taken as Exs.R.1 to R.7.

7. Being aggrieved by and dissatisfied with, the judgments and decrees of both the Courts below, the wife preferred this Civil Miscellaneous Second Appeal on the following main grounds among others:

Both the Courts below erred in appreciating the facts, due to their wrong approach. The divorce application filed under Section 13(1)(ia) of Hindu Marriage Act, on the ground of cruelty should have been dismissed. The criminal case ended in acquittal, consequent upon the compromise arrived at between the rival parties and not on merits. Exs.A.3 to A.5 were wrongly relied on by the Courts below. Absolutely, there was no evidence for granting divorce on the ground of cruelty. Accordingly, she prayed for setting aside the judgments and decrees of both the Courts below.

8. Heard both sides.

9. At the time of admitting this second appeal, my learned Predecessor framed the following substantial questions of law:

1. Whether the grant of divorce under ground of cruelty is right or not?
2. Whether the complaint preferred by the wife against husband is amount to mental agony?
3. Whether the act of mental cruelty continued even after the compromise?
4. Whether the husband has discharged his burden of proof?

At the time of hearing the second appeal, the following additional substantial questions of law are framed:

- (i) Whether after compromise the act of mental cruelty will stand?
- (ii) Whether the husband discharge his burden of proof?

The Points:

10. Axiomatic and obvious, the fact is that there is no proper definition of cruelty as found set out in any statute, whereupon the Honourable Apex Court in catena of decisions highlighted as to what would amount to mental and physical cruelty. Before embark upon the discussion, based on factual and legal issues involved in this case, I would like to refer to the following decisions purposefully and fruitfully:

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

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or

to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

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

11. ... To satisfy the requirement of clause (i-a) of sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitutes the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a

conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the courts perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer. ..."

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

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

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

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

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb, or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes

mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

11. I am of the considered opinion that the aforesaid excerpts from the decisions of the Honourable Apex Court would be more than sufficient to have a clear understanding as to what type of conduct of a spouse would constitute cruelty as against the other spouse.

12. As such, the perusal of the aforesaid decisions would clearly indicate that mere wear and tear in the marital life, should not be taken as sufficient ground constituting cruelty for granting divorce.

13. It is therefore clear that in the wake of the dicta of the Honourable Apex Court, it has to be analysed as to whether both the Courts below approached the problem in proper perspective. A mere perusal of findings of both the Courts below, to say the least, would speak volumes that they never considered those decisions in proper perspective.

14. The perusal of the petition in H.M.O.P.No.50 of 2004 filed by the husband under Section 13(1)(ia) of the Act, would demonstrate that the husband made some bald allegations that the wife insulted him; made publications as against him; lodged false complaint with the police and that thereby caused physical and mental cruelty to him.

15. It is therefore just and necessary to analyse in seriatim the various points raised by the parties concerned.

16. The contention of the husband that she gave false complaint with the police and it ended in acquittal as though it was an acquittal on real merits of the case, turned out to be false. During trial, the true picture was brought to limelight as under what circumstances, the criminal case ended in acquittal.

17. As many as six documents were marked during trial, still the judgment of the criminal Court was not marked in view of the obvious reason that had it been marked, it would have exposed the unsatisfactory plea of the husband.

18. During the appellate stage, the certified copy of the judgment of the criminal Court, was marked. The perusal of it, would clearly highlight that the case ended in acquittal, because the wife herself resiled from her complaint.

19. During the second appellate stage, both sides filed M.P.Nos.3,4 and 5 of 2007 respectively and heard both sides thereon. I am of the considered opinion that this being a matrimonial matter, for the purpose of comprehensively deciding the dispute, it is just and necessary to permit all of them to file additional documents on their sides, Moreover, these additional documents are not cooked up ones or brought about artificially for the purpose of this case. Accordingly, M.P.No.5 of 2007 is allowed and the following documents are marked on the husband's side as under:

(i)Ex.P.7 - The Certified copy of the order passed by the Sessions Judge, Karur in Cr.R.P.No.21 of 2006 dated 29.06.2007.

(ii)Ex.P.8 - Notice from the Commissioner, Karur Municipality, dated 26.05.2003.

On the side of the wife, M.P.No.4 of 2007 is allowed and the following documents are marked on the wife's side:

(i)Ex.R.8 - Certified copy of the order dated 21.03.2003 passed in CrI.O.P.No.7324 of 2003.

(ii)Ex.R.9 - Certified copy of the order dated 13.05.2003 passed in CrI.O.P.No.13840 of 2003.

20. During the appellate stage, the order of the Magistrate was filed and relied on as evidence. The typed set of papers filed before this Court would evidence that before the Criminal Court, a compromise petition was filed, setting out the fact that before the Panchayat, the husband and wife got the matter settled and that they intended to resume cohabitation. Accordingly, they wanted the criminal case to be dropped. However, the learned Magistrate by virtue of his order dated 23.02.2004, dismissed the said petition on the ground that the offences under Section 498(A) and 506(ii) I.P.C were non-compoundable ones.

21. In view of the clinching admitted facts, the matter is clear that even before the disposal of the Criminal case, the compromise was arrived at between the husband and the wife to the effect that the criminal case should be withdrawn and they should resume cohabitation. Since the offences are non- compoundable, the wife was constrained to depose quite contrary to her complaint which resulted in acquittal of the husband and his parents in the criminal case. In this proved background, if the averments in the petition are considered, it is at once clear that the husband was guilty of suppression of material facts.

22. It is not as though the criminal Court gave a finding that the husband was innocent on real merits of the case. But, in view of the compromise alone, the said acquittal resulted.

23. Quite contrary to the undertaking given before the Criminal Court as found set out supra, the husband resiled and backed out from his stand relating to resumption of cohabitation within a

period of one month from the date of such acquittal and he had chosen to issue divorce notice to his wife.

24. At this juncture, the pertinent question arises as to how such a course was open for the husband. The learned Counsel for the wife would correctly argue that for the purpose of getting acquittal, the husband hoodwinked the wife to enter into such a compromise with him and consequently, made her to depose as though there was no harassment meted out to her by the husband and his parents. The very fact that he agreed to resume cohabitation with his wife and thereafter got the criminal case ended in acquittal in his favour, would clearly demonstrate that the husband is not entitled to press into service the alleged facts of cruelty purportedly perpetrated by the wife as against the husband.

25. After such compromise and the consequent acquittal recorded in the criminal case, there was no more act of cruelty allegedly perpetrated by the wife as against the husband. Hence, in such a case, the theory of cruelty as put forth by the husband should have been rejected by both the Courts below.

26. Ex.A.4 is dated 27.04.2004, the certified copy of the husband's divorce notice issued to the wife, whereas the acquittal judgment of the criminal Court is dated 23.03.2004. Ex facie and prima facie, it is crystal clear that the husband exploited the situation and got acquittal from the Criminal Court. However, after getting the benefit of acquittal, he turned turtle and had a volte face which resulted in issuing divorce notice by him to his wife quite antithetical to his previous stand of compromise.

27. At this juncture, the learned Counsel for the husband drew the attention of this Court to the additional substantial questions of law to be framed in this appeal and accordingly, both sides submitted their arguments.

28. The learned Counsel for the husband would contend that a sum of Rs.2 lakhs was paid by the husband to the wife before the criminal case ended in acquittal, by way of showing his concern towards her.

29. The learned Counsel for the wife would contend that absolutely no such amount was paid to her and the evidence in that regard is not clear. Whatever might be the circumstances, the husband having agreed to resume cohabitation with the wife prior to the acquittal recorded by the criminal Court, was not justified in veering round and taking an antithetical plea seeking divorce by issuing Ex.A.1, the divorce notice, almost a month after the criminal case ended in acquittal. In fact, the wife is the sufferer as she sustained injury inflicted by the husband and her in-laws and it is clear from the records placed before the Court.

30. The F.I.R itself which was lodged by her with the police on 05.03.2003, would contain the details of the injuries sustained by her, as the husband and others attacked her and thereupon only, the police registered the case in Cr.No.1 of 2003. As such, the husband having perpetrated cruelty as against the wife, cannot try to turn the table as against her and that too, when the criminal case ended in acquittal on the assurance of the husband that there would be resumption of cohabitation

between the husband and the wife. Ultimately, the husband after reaping the fruit of the wife's concession and kindness towards him, by securing acquittal in his favour, cannot be heard to contend that the wife was harsh towards him earlier to such acquittal nor can he be given the facility of obtaining divorce on the ground of alleged false complaint lodged by her with the police.

31. To the risk of repetition, it could be highlighted that after such acquittal, there is no evidence to show that the wife behaved cruelly and in fact, even before that there is nothing to show that she behaved cruelly towards the husband.

32. The complaint given by her as against her husband to the Commissioner of Karur Municipality, the employer of the husband, was anterior to such compromise. The additional documents filed before this Court dated 26.05.2003 the communication issued by the Commissioner would demonstrate that the said complaint was given by her on 23.05.2004 long prior to the said compromise. Her complaint to Human Rights Commission was referred as "sub-judice" before such compromise. As such, the conduct of the husband clearly exposes his unwarranted attitude towards his wife.

33. Admittedly, the wife happened to be the husband's father's sister's grand daughter and even before marriage, she was a lame. Admittedly and unambiguously, it was a love marriage between them. After giving birth to two children, the wife being lame, could have had no rhyme or reason to pick up unnecessary quarrels with the husband or to torture him or to indulge in pinpricks as against him. Whereas considering the preponderance of probabilities and the averments in the petition coupled with the oral evidence on both sides, it is clear that this is not a fit case for divorce.

34. The husband cannot try to capitalize his own misconducts and unwarranted attitude towards his wife. If at all, there is any evidence to prove that the wife gave any false complaint either to the police or to the higher officials of the husband, the question of taking them into consideration would arise. In this case, the husband at the first instance, could not get anticipatory bail as evidenced by the additional document, but others could get anticipatory bail as per the order dated 21.03.2003 in Crl.O.P.No.7324 of 2003. However, subsequently, by virtue of order dated 13.05.2003, in Crl.O.P.No.13840 of 2003, the husband got anticipatory bail, but the wife did not oppose it by figuring herself as an intervener. Simply because, the wife approached the police for help and that too after sustaining injuries, there is no presumption that the wife had intended to treat the husband cruelly. But, on the other hand, if the complaint lodged with the police is turned out to be one actuated by malice or if there are successive frivolous complaints by the wife, then such facts would enure to the benefit of the husband in seeking divorce. Here, it is not so for the reasons already adverted to supra. She has not given any frivolous complaint with the employer of the husband also.

35. In the petition itself, absolutely there is no plausible reason set out as to what made such lame wife to create trouble when the husband was allegedly so kind and considerate towards her. As such, the case of the husband is an untenable one and unbelievable one.

36. The learned Counsel for the husband cited the following decisions:

(i) Dastane v. Dastane reported in AIR 1975 SUPREME COURT 1534.

(ii) Chetan Dass v. Kamla Devi reported in (2001) 4 Supreme Court Cases

250.

37. The learned Counsel for the wife relied on the following dicta:

(i) Rajinder Bhardwaj v. Anita Sharma reported in AIR 1993 DELHI 135.

(ii) A.Jayachandra v. Aneel Kaur reported in 2005-2-L.W.149.

(iii) Gajalakshmi v. R.Saravanan reported in 2004(1) TLNJ 329.

38. In fact, the wife was driven to the extent of filing an application under Section 125 C.P.C for maintenance and except to the wife, the maintenance was ordered to the minor children on the ground that she was employed. The trial Court as well as the appellate Court simply misunderstood the judgment of the criminal court and the complaint given to the employer by the wife and consequently misapplied the decision of the Honourable Apex Court in A.Jayachandra v. Aneel Kaur reported in 2005-2-L.W.149.

39. The findings of both the Courts below are far from satisfactory as they should not have been carried away by the acquittal of the criminal case as well as the complaint given by the wife to the employer of the husband in granting divorce.

40. Hence, a deep scrutiny clearly highlights that the husband was at fault in causing the matrimonial rift in the relationship between them and that alone, paved the way for the dispute. Accordingly, the points are answered.

41. In the result, this second appeal is allowed, setting aside the judgments and decrees of both the Courts below and ultimately, the H.M.O.P.No.50 of 2004 on the file of the Subordinate Judge, Karur, is dismissed.

42. I am of the firm opinion that this is a fit case for the husband to bury the hatchet and think of reunion. Both parties should forget about the past and the unsavory events which took place in their life and resume cohabitation at the earliest point of time in the best interest of their two female children whose future is of paramount importance. Consequently, M.P.Nos.1 and 2 of 2007 are closed. No costs.

rsb To

1.The Principal District Judge, Karur.

2. The Subordinate Judge, Karur.

