

Delhi High Court

Savitri Balchandani vs Mulchand Balchandani on 14 February, 1986

Equivalent citations: AIR 1987 Delhi 52, 1986 (11) DRJ 297

Author: M Narain

Bench: M Narain

JUDGMENT Mahinder Narain, J.

(1) This is a wife's appeal against the order passed by Shri Rc Jain, District Judge, Delhi on 23rd March, 1984. The Additional District Judge has dissolved the marriage between the parties by granting divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act (hereinafter called 'the Act'). The Additional District Judge has left the parties to bear their own costs.

(2) The marriage between the parties was performed according to the Hindu rites at Ajmer, Rajasthan on 17-8-1949.

(3) A son, named Kalyan was born to the parties on 21-9-51.

(4) It is stated in the petition filed by the respondent-husband that in the year 1951. he was sponsored by the University of Bombay to go to London. Before going to London, he requested the wife to accompany him to London, but she refused to do so. It was stated that the husband returned, after his visit to London, at the end of October, 1953 and on his return, he found the behavior of the wife to be cruel and not submissive ; and that the wife was always abusing the husband and his parents etc. and that the threatened the husband with dire consequences; and has got the respondent beaten through her relations.

(5) The husband stated in the petition that in the year 1953 the respondent left the matrimonial home without any reason whatsoever and came back and rejoined the husband in the year 1955. That is also stated in the petition that the wife left the matrimonial home on 29th September, 1975 and that since then she had not joined the petitioner. The husband also asserted that the wife used to abuse the petitioner and his parents in filthy language, which caused mental-tension to the husband. on account of wife's misconduct, and that the husband thus suffered mental cruelty at her handg.

(6) The original petition was filed, by the respondent in the appeal, on 24-11-1977. In this petition there were two respondents. One, the ' appellant, and the other Shri Jethanand In the original petition the petitioner had made allegations of an illicit relationship between respondent No. 1 and respondent No. 2 in paragraphs 5 to 9 read together.

(7) The original written statement filed by the appellant was dated 18-7-1978, wherein the assertions of illicit connection between her and Jethanand were traversed, and it was asserted that the respondent petitioner himself has stated in the petition that Jethanand was like a father to the respondent.

(8) Replication was filed by the petitioner on 4-9-1978.

(9) On pleading of the parties, following four issues were framed on 21-2-1979 :-

1. Whether the parties last resided together at Delhi and thus this court has jurisdiction to try this petition ? 299 2. If issue No. 1 is proved, whether the respondent has treated the petitioner with cruelty ? O P 3. Whether the respondent has deserted the petitioner for a continuous period of two years immediately preceding the presentation of the petition ? Op 4. Relief.

Thereafter the parties led their evidence.

(10) After the evidence had been closed, an application was moved for amendment of the petition by the respondent on 2-2-1984. That amendment was allowed on 14-2-84 By this amended petition allegations of illicit connection between respondent No. 1 and Jethanand in original petition paragraphs 5 and 9, were eliminated. Amended written statement was filed by respondent No. 1 on 21-2-1984.

(11) In the amended written statement the wife denied the allegations of cruelty and desertion made against her. She also denied that she ever abused the husband but asserted that "it was the behavior of the petitioner towards the respondent was most objectionable and cruel which on the contrary created mental tensions in the mind of the respondent, that the petitioner's father had expired before the marriage of the petitioner and the mother of the petitioner rarely lived with the petitioner so all the allegations in this regard are malicious and malafide. On the contrary attitude of the petitioner towards the respondent was very cruel."

(12) It was stated that the husband never offered to take the wife to London. It was denied that wife got the husband beaten through her relations. It was asserted that the husband was making demands of money from the appellant's parents on which account the wife was forced to leave the matrimonial home. It was stated inter alia in para 6 of the written state mean that "She was actually compelled by the circumstances beyond her control to leave the petitioner's house in a very desperate manner. The situation was created deliberately by the petitioner for the respondent which left no other alternative for her but to leave the house of the petitioner. Since cohabitation was not possible between the petitioner and the respondent, so she had to abandon the society of the petitioner."

(13) Para 8 of the amended written statement reads as follows :- "8. That the contents of para 8 of the petition are correct only to the extent that respondent was forced and compelled to leave the house of petitioner on 29-9-1975 On 28-9-1975 the respondent noticed that the petitioner was embracing one Miss Naina Wazirani and whose name is interestingly mentioned by the petitioner in his book 'Fundamental of Statistics ' The petitioner happens to be the author of this book. Since the petitioner was caught red handed by the respondent which resulted into hot quarrel between them and thereby the respondent was compelled to leave the house of the petitioner The petitioner is a man of bad character, and is known for his weakness for women. He used to be always in bad company of women and was known in the locality for this. The respondent has positive proofs against the petitioner for his illicit connections and relations with many women and their names will be disclosed at the appropriate stage. It is wrong that the petitioner ever tried for reconciliation."

(It may be mentioned here that after the arguments in the case are concluded before me, the appellant has moved an application to delete some portion of paragraph 8 of the amended written statement. That application, was dismissed by order dated 15-1-1986).

(14) No replication was filed to the amended written statement by respondent petitioner.

(15) A statement was made thereafter before the Court on 29-2-84 that no further evidence need to be led by the parties.

(16) Thereafter the matter was argued and by judgment dated 23rd March, 1984, the petition of the respondent/petitioner was decreed under Section 13(1)(ia) and (ib) of the Act.

(17) Before me, issue No. 1 which related to jurisdiction of the Courts at Delhi, was not pressed. The finding of the Additional District Judge that the District Judge had jurisdiction at Delhi to deal with the case if(r) therefore, affirmed.

(18) Issue No. 2 relates to whether the respondent wife has treated the petitioner husband with cruelty. With regard to cruelty, the assertions of the respondent are in paragraphs 4) 5, 6 and 9 in amended petition dated .2-2-84.

(19) These paragraphs read as under :-

"4. That right from the beginning of the marriage, respondent used to misbehave with the petitioner and used to abuse the parents, etc. of the petitioner. The life of the petitioner has been under tensions right through.

5. That in the year 1951 the petitioner was sponsored by Bombay University to London and had returned back to India in the end of September, 1953 The petitioner requested the respondent to accompany to London, but she refused on false pretexts. 6. That the petitioner came back to India in the end of September, 1953 and found the behavior of the respondent cruel and not submissive. She was always abusing the petitioner and his parents, etc. and had threatened with the dire consequences. The respondent also got beating to the petitioner through her relations.

9. That the behavior of the respondent was always very cruel towards the petitioner. She used to abuse filthy language to the petitioner and his parents and even got beating to the petitioner through her relatives. The petitioner had always mental tension because of misconduct of the respondent and thus suffered mental cruelty at her hands." The corresponding paragraphs in the amended written statement dated 21-2-84 read as under :-

"4. That the contents of para No. 4 of the petition are entirely baseless and as such they are vehemently denied. It is far from truth that the respondent ever abused the petitioner or his parents or she ever misbehaved the petitioner. On the contrary the behavior of the petitioner towards the respondent was most objectionable and cruel which on the contrary created mental tensions in the mind of the respondent. That the petitioner's father had expired before the marriage and the mother

of the petitioner rarely lived with the petitioner, so all the allegations in this regard are malicious and malafide. On the contrary the attitude of the petitioner towards the respondent was very cruel. 5. That the contents of para No. 5 of the petition are basically wrong and are therefore denied The petitioner never made any offer to the respondent for her company to London The Contents are misleading since the petitioner returned back to India in October 53 and not in September, 1953 6. That the contents of para No. 6 of the petition are malicious and mischievous and are not admitted. The burden (onus) of proof lies upon the petitioner that he was beaten by the relatives of the respondent. The charges are devoid of substance and they are levelled with an ulterior motive. The petitioner wanted financial help from the parents of the respondent with a view to start some business after he returned from London. The respondent's parents could not satisfy he ever increasing demands of the petitioner in regard to money etc. So the petitioner retaliated strongly and forced the respondent to leave his house. She was actually compelled by the circumstances beyond her control to leave the petitioner's house in a very desperate manner. The situation was created deliberately by the petitioner for the respondent which left no other alternative for her but to leave the house of the petitioner Since cohabitation was not possible between the petitioner and the respondent, so she had to abandon the society of the petitioner. 9. That this para is wrong and is denied. It is only a bundle of repetitions."

In connection with the cruelty, the assertions made in paragraph 8 of the amended written statement need to be noticed. That paragraph has already been reproduced in the earlier part hereof (20) Again in connection with the cruelty, some parts of deposition of the petitioner, as Public Witness I, also needs to be noticed The petitioner husband has deposed that when he came back to India after his studies in England in September 1953 and went to his wife "she fainted and fell on the ground and murmur that she had taken a poison. I was present at that time, and Mr. Jetha Nand was also there at that time. It happened at Agra. She was saved by Mr. Jetha Nand."

(21) Apparently the wife did not come to live with respondent, after his return from England in September, 1953, and the husband petitioner thereafter filed a petition for restitution of conjugal rights in 1954. After the filing of the petition for restitution of conjugal rights' by the husband, the wife came to live with the husband in December 1955 and as a result, the petition for restitution was got dismissed as withdrawn. 303 (22) The husband deposed that the wife left the house where they were living when he had gone to office on the morning of 29th September, 1975 and when he returned from the office, he found his wife not in the house; that on 30th September, 1975 he was visited by an Advocate ; that the wife came to visit him on 31st of December, 1975 and said that as the year was coming to an end, so their married life was also coming to an end on that day. The husband deposed that wife did not cohabit with him after 29th September, 1975. The husband thereafter deposed to a visit to the son of respondent Kalyan, at Bombay, where the wife was also living. According to the husband, he did not cohabit with his wife in his son's house at Bombay. The husband deposed that he had received a letter from his wife which was exhibit marked as P-1. His son had also written on a page of that letter, and the letter of the son was marked as Ex. P-2. The letter Ex. P-1, written by the wife is in Sindhi language and a translation thereof has been filed. Ex. P-2 written by the son is, however, in English. The translation of Ex. P-1 has been filed on the record and it needs to be reproduced in full. Ex. P-1, as translated reads :- "ONE German nationalist presented this pen to me. With the help- .of his pen, on your birthday I return to you all that I owe to

you. On 7th April you will go to Gurdwaras and temples to offer prayers. But remember you wretched creature God will never forgive or listen to your prayers because you are the most mean fellow who has driven out an innocent lady and her tender aged boy,. No matter whatever religious books you may read every morning, God will never forgive & shameless .brute like you. You bastard, let me tell you this day, I need,, no Gurdwaras. because I am myself pure like anything, and therefore my son also worships and serves me to his entire satisfaction. My son remembers his duties very well and desired to serve you also. But you butcher, you are too proud of yourself. Your brother Nanik had said me that after your death your body will be eaten away by dogs I can now see that this is going to happen No one will. come bearer to you because you are the worst type of your kind. For me in any case you are dead since the day I left your house.. I do come to Delhi but never care to see your face because / hate your ugly face. I understand, you are to die soon, but before death takes you away, I shall myself bring your complete downfall ; then alone I shall rest in life. Just like a dog you have been kicked out by your ten prostitutes after I left you No one now speaks to you except a new prostitute your surroundings. This- 11th "Rundi" of that nature who will supply food to you from the below, and take it out from your mouth. Show this letter to each one near you, and I shall be very happy. I am sending one copy of this letter on your residential address, and the other to your office so that on your birthday you should know, what you are and what I am. You may be thinking, I am trying to blackmail you. But no all your deeds shall soon be out in your office, and you will get no peace or respect in any corner. Now "Kafar" listen carefully. Once again I am coming to Delhi shortly. I shall remove each brick of the house in which you are living and shall openly throw it on your head and shall shatter all your respect that you are commanding at present. I have left you in that house which I shall now destroy and will create such circumstances which will compel you to run away from Delhi. Then I shall rest and live peacefully at Delhi with my head up.

"Kafar" you will now understand, what is your standing. God will never forgive you This is my prayer to Him on 7th April, your birthday I shall urge Him to remove you from this earth immediately. May God never show you another 7th April, will be my earnest prayer to Him on your this birthday. sd/- Savitri" (Emphasis have been added) Ex. P-2 written by the son in the very same letter also needs to be reproduced which reads as under :- "EVERY type of man can be tackled by 3 ways One is by Politeness & by requesting-what we have been doing for the last 18 months. 2nd one is by 'Gunda Girdi'. The way we are adopting now & this will be for six months. I have so much standing that even my absence from Delhi can not stop me of adopting the 2nd Method. The 3rd one is by Law & this method will be adopted on 29th September,' 77. The Day on which we got freedom in Life & learned many new things in Life. sd/- Kalyan"

(23) In this case evidences has been led by the husband, whose deposition establishes the facts on which he relies upon for establishing cruelty. The document Ex. P-1, on which the husband relies upon to show the conduct of the appellant wife towards him and the manner in which the wife addresses him, makes the nature of relationship between the parties clear. In Ex. P-1, the husband is called 'Butcher', 'Bastard', 'Kafar', 'wretched creature', 'most mean fellow.' 'shameless creature'. The wife informs him that "after his death the body would be eaten away by dogs", "for me in any case you are dead". "I hate your ugly face", "you are to die soon", that "he keeps surrounding him new prostitutes", that "the 11th prostitute would give food to him from below and take it out from his mouth".

(24) In my view, this letter, the authorship of which cannot be doubted, as Ex. P-2, written by the son Kalyan (which was admitted to have been written by him when he appeared in the witness box as RW-4), is also written in one of its pages. Kalyan admits that "I'll let Ex. P-2 be in my hand". By itself, in my view, this Ex. P-1 is vicious and cruel, contains too much venom for the recipient of it, that it cannot but be cruelty of the gravest kind. From this letter alone it is clear that the writer of it and the recipient of it cannot function as a marital unit. Such a letter can only be written when the marriage between the writer of it, and the recipient of it has completely broken down.

(25) EX. P-1 and P-2 taken together, as they must be taken together, have been written on same bunch of papers by the mother and the son, also establish that the mother and the son are on the one side, and the father is on the other side, that the mother and the son have collaborated with each other in inflicting agony upon the respondent petitioner husband.

(26) The respondent husband has also deposed about the acts of cruelty committed by the son at the behest of mother. The respondent husband has deposed that "the respondent had asked to me that I should make the gift of the house to the son. I refused to make gift of the house and then the son caught hold of me from my testicles, and gave me beating". But for the collaborative efforts of the son and mother in writing Ex. P-1 and P-2, it would have been difficult to say that cruelty by the son has a bearing upon this case. In law cruelty has to be of the other part of the marital unit. Normally the cruelty by any of the children of the parties to the marriage would be irrelevant. But when one of the children so identifies himself with one of the parties, and that party collaborates with the children to perpetrate cruelty, the cruel conduct of the child of the marriage may become a factor to be acted upon.

(27) In the facts and circumstances of this case, I am inclined to believe what was deposed to by the respondent, regarding the cruel act of the son in grabbing the testicles, and giving a beating to the father. In my view, it would certainly be cruelty on the father, when the mother and the son are acting in concert with each other, grab the testicles of the father on his refusal to do what the mother and the son want. It is an act of extreme physical violence and cruelty to any man to grab and squeeze him by his testicles, as such an act causes extreme physical agony and pain.

(28) The respondent husband had deposed that on his return from London the wife took poison when she saw him, and that she was saved by Jethanand. Attempt to commit suicide with a view to coerce the husband into doing something which he is not inclined to do, for whatever reason, in my view, is also a cruelty on the husband. Justice Leila Seth in her judgment reported as *Shakuntala Kumari v. Om Parkash Ghai*, 1981(1) DMC 25, also said that threat to commit suicide by the wife amounts to cruelty on the husband. In my view attempt to commit suicide by taking poison would also amount to cruelty. In *N.G. Dastane v. S Dastane*, also it was held that threat given by the wife to her husband that she will put an end to her own life, was cruelty towards the husband. In this case, the act of taking poison by the wife was cruelty to the husband.

(29) There is yet another matter to be considered. Are the assertions made in paragraph 8 of the amended written statement to the effect that "On 28-9-1975 the respondent noticed that the petitioner was embracing one Miss Naina Wazirani and whose name it interestingly mentioned by

the petitioner in his book 'Fundamental of Statistics'. The petitioner happens to be the author of this book. Since the petitioner was caught red handed by the respondent which resulted into hot quarrel between them and thereby the respondent was compelled to leave the house of the petitioner. The petitioner is a man of bad character and is known for his weakness for women. He used to be always in bad company of women and was known in the locality for this. The respondent has positive proofs against the petitioner for his illicit connections and relations with many women and their names will be disclosed at the appropriate stage", also cruelty by the wife ?

(30) It is noteworthy that in spite of the assertion in the written statement that she would do so, the appellant wife did not disclose the names of the women with whom the respondent had "illicit connections".

(31) The question is, Are false, scandalous, malicious, baseless and unproved allegations made in the written statement cruelty to the other party? The trend of judicial authority in this High Court is that false, malicious, baseless, unproved allegations made by one person against his or her spouse, in letters addressed to the employer of the spouse, to any person in authority, or the police, are cruelty to that spouse, (as in *Shakuntala Kumari v. Om Parkash* (supra)-1981 Marriage Law Journal 197); *Lajwanti Chandhok v. On Chandhok*, 1(1981) Ii Dmc 97 : 1982 Marriage Law Journal 21 Ii (M.L. Jain, J); *Kiran Kapur v. SurinderKumar*, 1982 RLR. (Note) 37 at page 36 (Talwar, J.); *Shardha Nand Sharma v Kiran Sharma*, 28 (1985) Dlt (SN) 32 (N N Goswamy, J.). In *Girdhari Lal v. Santosh Kumari*, {(1982) I Dmc 180 : 1982 Marriage Law Journal 2711 (S.S. Kang, J.) Punjab ft Haryana High Court held that a false police complaint against the spouse is cruelty. In *JordenDlentdoh v S S Chopra*, [(1982) I Dmc 224 : 1982 Marriage Law Journal 444] (N.N. Goswami, J.), it was held that letters written to the superior officer were "very damaging to the reputation of the petitioner". In that case "wild allegations" were made that the petitioner, a Class I officer in Ministry of External Affairs, was being "exploited for her weakness to their advantage", "by these letters the respondent has tried to malign her and has also accused her of adultery". On appeal, a Division Bench of this court confirmed the finding of the single judge. The judgment of the Division Bench is reported only as a short note in Air 1985 Noc 45 (Delhi) (D.K. Kapar and D.P Wadhwa, JJ).

(32) It being well settled by authority that, false, defamatory, scandalous, malicious, baseless and unproved allegations made against the spouse in letters, and alleged complaints to superiors, or persons in authority, are cruelty ; is there any reason why these judgments should not be applicable to the false, scandalous, malicious, baseless and unproved assertions made in the written statements ?

(33) Before this matter is considered, it must be noted that the law relating to cruelty has been changed. Earlier cruelty had to be such which would affect the physical or mental health of the other spouse. This was the requirement when the *Dastane* case (supra) began. The Supreme Court decided this case according to the law of cruelty at the time of institution of the case Section 13(ia) of the Act now requires that "the other party has, after solemnization of marriage treated the petitioner with cruelty". It is no more required that cruelty must affect the physical and/or mental health of a party. In any case, my view is, that the courts must act according to the intent of the legislative changes already made, so tha (34) The question whether the allegations in the written statement can amount

to cruelty has to be considered in my view on the basis of the principle : when and in what circumstances subsequent events can be taken into account by courts. The Supreme Court has in *Upper Ganges Valley Electricity Board, ,* laid down that court can take subsequent events into account, inter alia when : (1) litigation between the parties ought to be shortened and ; (2) to do complete justice between the parties.

(35) All matrimonial proceedings need to be decided expeditiously and the proceedings shortened. Infact Section 21B of the Act, requires that as far as possible the trial should conclude within six months of the service of notice on the respondent and the appeals disposed off with in three months from the service of notice of appeal on the respondent.

(36) Already there are two views expressed by Courts in matters of allegations in the written statement, whether they can be treated as cruelty on the spouse. In *Jarnail Kaur v. Sarwan Singh*, 1979 Hlr 415: 1979 Marriage Law journal 366, *Tewatia J. of the Punjab and Haryana High Court* expressed the view that "Mere allegation contained in the written statement which has gone uncontested in the pleadings, coupled with the absence of any assertion that he suffered mental torture or agony as a result of the said unfounded allegations, would not justify a finding that the respondent wife had practiced cruelty on him, particularly when such an allegation ought to have preceded the filing of the petition to enable him to seek relief on that ground."

(37) As against this view there are two judgments of M.L. Jain, J.-One reported as *Parihar v. Parihar*, , and the other *Pushpa Rani v. Krishan Lal*, [1982 HLR. 238 : 1982 Marriage Law Journal 140] as a Judge of this Court. In the first case, which was the wife's appeal, inter alia relying upon *Lachmeshwar v. Keshwar Lal*, Air 1941 Fc 5, the Rajasthan High Court took into account events subsequent to the institution of the petition-letters written by wife to the Air force authorities. It was found that these letters could cause immense harm to the husband. The "irresponsible insinuations and allegations, which were made during the course of litigation against the husband and his family can not be brushed aside", as "reactions to the husband's behavior". It was held that "cruelty had taken place", and the Hon'ble Judge was satisfied that the marriage should be dissolved. The wife's appeal was dismissed.

(38) In *Pushpa Rani's* case (supra), M.L. Jain, J. had dealt with a case in which, the wife had "hinted" in the written statement filed by her that an illicit relationship existed between the petitioner husband and one Smt. Bindra Devi. When the husband appeared in the witness box, the "hint" in the written statement was directly suggested to him ill the cross-examination. The husband said that Bindra Devi was like a mother to him. The suggestion was denied by Bindra Devi when she was examined as a witness. The wife in her statement "improved" upon what was stated in the written statement, and said that she had seen the husband and Bindra Devi, who was 20 years older than the husband, "closeted together, and sleeping together, in a compromising position." This imputation was not a ground pleaded in the petition by the husband, "it simply could not have been thought of at that time". It was held that the allegations of adultery made by the wife, at the time of cross examination, and in her deposition could be taken into consideration for giving a finding of cruelty. The Hon'ble Judge had relied upon the principle that cruelty subsequent to the institution of the petition could be taken into account, to prevent multiplicity of proceedings, and relied upon



Ram Dayal v. Mali Devdiji, . He. however, did not refer to Upper Ganges Valley Electricity Supply Co. Ltd v. U.P. Electricity Board, 1973 13) Scr 107, referred to above, which has clearly laid down the principal that subsequent events can be taken into account, inter alia, when : (i) the litigation between the parties ought to be shortened; and (ii) to do complete justice between the parties.

(39) All matrimonial proceedings need to be decided expeditiously It is desirable that matrimonial litigation be shortened, in fact Section 21B of the Act requires it, and multiplicity of proceedings of matrimonial nature be prevented (40) Both of the above said reasons are good reasons for permitting any party to matrimonial proceedings to rely upon the averments contained in the pleadings, to establish whether one party is guilty of cruelty towards the other of them. For this reason I am of the view that assertions made in para 8 of the written statement can also be looked into for the purposes of determining whether the appellant wife has been guilty of cruelty to the respondent husband. The appellant wife, it is clear from Ex P-1 is u<sup>er</sup>ed to filthy language and has persistently been abusing the respondent husband of having committed adultery with persons known or unknown The only named person with whom the respondent is alleged to have committed adultery is Naina Wazirani on 29th September, 1975. The wife stated in her examination in court:- "ON 29th October, 1975 (should be 29th September, 1975), the petitioner came to the house in the evening. He was accompanied by a girl, named Naina Wazirani."

From the above deposition, if it is to be believed, it would follow that the wife had seen the husband bring a girl named Naina Wazirani into the house. This necessarily means that the two of them had walked in together, into the house. In view of the allegations in para 8 of the written statement, it is extremely unlikely that the wife would have permitted the husband to bring "Naina Wazirani" into the house without raising hue and cry and what is more, would not have permitted 'her' and the respondent to get into and to lie in bed together. The wife deposed that "I saw both of them lying on the bed, when I objected to that the petitioner started beating me and in the meantime my son and two neighbours Mr. Bhagwan Dass Malik and Mr. Rajinder Parshad (Krishan Chand also came there) also came there and the girl slipped away"

(41) It is hardly likely that after the husband and the girl had been seen walking into the house, they would be permitted to go as far as a bed room and would be seen lying on the bed together. This story is not worthy of being believed, and I do not believe it for the reasons stated above This is the only alleged indiscretion deposed to by the wife. In the written statement however she had stated that "the petitioner is a man of bad character and is known for his weakness for women. He was used to be always in bad company of women and was known in the locality for this. The respondent has positive proofs against the petitioner for his illicit connections and relations with many women and their names will be disclosed at the appropriate stage."

(42) From the record of the case it is clear that apart from the name of Naina Wazirani, no other name is disclosed in the wife's deposition.

(43) To me it is clear that allegations made in para 8 of the written statement by the respondent wife are false and they were false to her knowledge. Not only these allegations were false, they were per se defamatory. It has been said in that making defamatory assertions in the plaint signed and filed

by the plaintiff, is publication. On a parity of reasoning, it will be publication, when written statement is signed and filed. The Madras case, cited above, which related to a complaint under Section 500 of Indian Penal Code, the complainant had been described as a concubine-which words were held to be per se defamatory. In the instant case, in the written statement (para 8), it is asserted that the petitioner (respondent before me) is a man of bad character .....". Allegations in para 8 of the written statement are per se defamatory, as they assert that the husband is an indiscriminate promiscuous Philanderer, and in view of publication of allegations, they are by themselves cruelty.

(44) In view of what is stated above, I am of the view that the appellant wife has persistently made false and baseless defamatory allegations against the husband regarding illicit relations with other women. She has failed to prove any of her assertions in accordance with law. Her own testimony in this regard is unworthy of reliance, for the reasons already stated. In the circumstances I am of the view that these false and baseless allegations which have been made by the wife in the written statement are sufficient in themselves, to bring home the charge of her having been cruel to the husband. In my view the husband is entitled to a decree of divorce on this ground alone.

(45) Mr. Gulati, appearing for the wife, says that the petitioner husband had failed to state particulars of cruelty in his petition for divorce and as such it is not open to the petitioner husband to rely upon the evidence, oral and documentary, which has been produced, as the evidence which is at variance with the pleadings, must be ignored.

(46) It has first to be ascertained what is the nature of assertions/ particulars which are required to be set out by the petitioner, in a petition for divorce on the ground of cruelty. Mr. Gulati says that the requirements of the petition for cruelty are to be found in Rule 4 of the Hindu Marriage (Punjab) Rules, 1956, dated 2nd November, 1956. That Rule reads as under :- "CONTENTS of the petition. All petitions under Sections 9 to 13 shall state- (i) the date and place of the marriage; (ii) whether the petitioner and the respondent were Hindus by religion at the time of the marriage and whether they continue to be so up to the date of the filing of the petition; (iii) the status and place of residence of the parties to the marriage before the marriage and the time of filing the petition; (iv) the principal permanent addresses where the parties have cohabited, including the addresses where they last resided together ; (v) whether there have been previous proceedings with regard to marriage by or on behalf of any party; if so the result of those proceedings ; (vi) whether any children were born of the marriage and, if so, the date and place of birth and the name and sex of each child separately, and whether alive or dead ; (vii) the matrimonial offences charged set in separate paragraphs with the times and places of their alleged commission."

(47) Mr. Gulati says that Rule 4 (vii) set out above, requires the petitioner to state the matrimonial offences charged in separate paragraphs. The times and places of occurrence of the matrimonial offences has also to be set out.

(48) In the instant case we are concerned with the matrimonial offence of cruelty. The particulars of cruelty are set out in paragraphs 4, 5, 6 and 9 of the petition. These paragraphs have been reproduced in full hereabove. A perusal of the same would show that as far as matrimonial offence of cruelty is concerned, it is stated in paragraph 4 that misbehavior of the respondent was

continuous. Paragraph 5 gives the year and the circumstances in which the offence of cruelty was committed, as does paragraph 6. Paragraph 9 also deals with continuous commission of the matrimonial offence. These are in my view sufficient particulars.

(49) The rules which have been framed by the Punjab High Court have been framed under Section 21 of the Act. Section 21 of the Act reads as. under:- "21. Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated as far as may be, by the Code of Civil Procedure, 1908."

In as much as Civil Procedure Code applies to matrimonial matters the provisions of order Vi, rule 5, Civil Procedure Code become important while dealing with objections of the kind that have been raised by Mr. Gulati.

(50) I am of the view that in case any respondent in a matrimonial case considers that what has been stated in the petition is not adequate for the purposes of formulating defense, it is always open to the respondent to make an application under order Vi, rule 5 of the C.P C. for furnishing of further and better particulars.

(51) The respondent wife. in the instant case, did not make an application asking for further or better particulars It has, therefore, to be assumed that in the instant case the particulars given in the petition were sufficient for the purposes of preparing the defense I am of the view that unless an application for better particulars is made before filing of the written statement, at the stage of the appeal, or even otherwise no grievance can be made that rules relating to the contents of the petition have not been complied with. I am further of the view that it would not be right to dismiss a petition merely because it is asserted or contended that the rules have not been complied with. If an objection is taken about the deficiency of pleadings, that the pleadings lack material particulars, an opportunity must be given to make up the deficiency, if it can be made up. It is only when the petitioner refuses to comply with the orders of the court regarding furnishing of the particulars that further action can be taken by the court.

(52) Mr. Gulati has referred to Hindu Marriage (Punjab) Rules for the reason that instant petition was filed on 24-11-1977 and was registered as H M.A. No 197/78 At that time the Hindu Marriage (Punjab) Rules are stated to have applied. It is to be noted that it is after the filing of the instant petition that Delhi High Court framed the Hindu Marriage Act Rules, 1979. These rules were gazetted in the Delhi Gazette, Part II, Section 1, dated 13th January, 1983 The Delhi Rules which came into operation later, obviously do not apply to the instant case. In any case even under the Hindu Marriage Act Rules, 1979, framed by the Delhi High Court rule 7 reads as under ; - "CONTENTS of petition. In addition to the particulars required to be given under order VII, Rule I, of the Code and Section 20(1) of the Act, all petitions under Section 9 to 13 shall state : (a) The place and date of marriage ; (b) Whether the petitioner and the respondent were Hindus by religion at the time of marriage and whether they continue to be so up to the date of filing of the petition ; (c) The name, status and domicile of the wife and the husband before the marriage and at the time of filing the petition; (d) The address where the parties to the marriage reside at the time of the presentation of the petition and last resided together; (e) the names of children, if any, of the marriage, their sex

and their dates of birth or ages ; (f) if prior to the date of the petition there has been any proceedings under the Act between the parties to the petition, full particulars thereof; (g) the matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particularity the time and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved e.g :- (i) if the petition is for restitution of conjugal rights, the date on or from which and the circumstances under which the respondent withdrew from the society of the petitioner ; (ii) if the petition is for decree of nullity of marriage on the grounds specified in clauses (c) and (d) of Sub-section (1) of Section 12 of the Act, the particulars of force or fraud and the circumstances in which force or fraud had been practiced Along with the time when facts relied upon were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts ; (iii) in every petition for Judicial separation or divorce by either the husband or the wife on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained, the specific acts of sexual intercourse and the occasion when and the place where such acts were committed ; (iv) in the case of alleged desertion, the date and the circumstances in which it began; in the case of cruelty, the specific acts of cruelty and the occasion when and the place where such acts were committed ; (v) in the case of unsoundness of mind or mental disorder, the time when such unsoundness of mind or mental disorder began to manifest itself and the nature and the period of the curative steps taken ; (vi) in the case of virulent and incurable form of leprosy or venereal disease in communicable form, when such ailment began to manifest and the nature and the period of the curative steps taken ; (vii) if the petition is on the ground specified in the Section 13(1)(vi), the date of renunciation and the particulars of the religious order which the respondent has entered into; (viii) if the petition is on the ground specified in Section 13(1)(vii) the date and the place where the respondent was last seen or heard of alive and the steps, if any, taken to ascertain his or her whereabouts ; (ix) where the petition is founded on the ground of rape or sodomy the occasion when, the place where and then names and addresses of persons with whom such acts were committed. In case of conviction for committing rape or sodomy, the particulars thereof ; (x) where the petition is founded on the ground of bestiality, the occasion when, the place where and the particulars of the beast with whom the husband had been guilty of bestiality; (xi) in the case of divorce under Section 13(2)(iii) of the Act, particulars of the decree under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or of order under Section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding Section 488 of the Code of Criminal Procedure, 1898) together with an affidavit that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards ; (xii) in the case of divorce under Section 13(2)(iv) the date and the place of birth of the wife together with the date and the place of repudiation and its mode ; (h) the property mentioned in Section 27 of the Act, if any ; (i) the relief or reliefs prayed for."

(53) It is to be noted that the Delhi High Court Rules require specific acts of cruelty, and the occasion when, and the place where such acts were committed, by its very nature, these pertain to physical acts of cruelty, as it is difficult, it not impossible, to give the occasion and place of commission of mental cruelty by the other party. Mental cruelty may be a persistent behavior of a particular kind which a particular party finds to be intolerable, for mental cruelty will vary from

person to person. What may be mental cruelty to one may not be mental cruelty to another.

(54) In the circumstances I am of the view that it is not sufficient for a party to make bald assertions that the petitioners have not given particulars of cruelty. Deficiencies of the petition in the matters of particulars must be pointed out by the person who asserts that the deficiency does exist, so that appropriate orders under order Vi, rule 5, can be passed. A party who asserts deficiency in the circumstances, ought to make an application under order Vi rule 5, Civil Procedure Code If this is not done. it would not be right for the court to dismiss a petition when at the final stage of arguments it is asserted that the petition lacks in particulars. In this view of the matter I reject the contentions of Mr Gulati that the petition did not comply with the rules or that the petition under Section 13(l)(a) did not contain sufficient particulars.

(55) The last contention of Mr. Gulati is that the appellant wife has not been in desertion since 28-9-79.

(56) I have held above that the evidence given by the appellant wife about the alleged incident involving "Naina Wazirani" on 28-9-79- is not believable I have disbelieved the evidence of the wife and as a consequence the evidence of the other neighbours, namely, RW-5 and RW-6 must also be disbelieved. I find that the incident regarding 'Naina Wazirani' is a concocted one.

(57) Having held that the 28th September, 1979 incident involving Naina Wazirani is a concocted one, it must be held that the wife was not driven out of the matrimonial home by the husband, and that she left it for reasons of her own and that she did not return after 28-9-1979 to the matrimonial home. In any case, the letter Ex P-1, which has been reproduced above, clearly indicates her intention to bring cohabitation with the- respondent husband to an end. I believe the statement of the respondent that she visited him on 31-12-1975 and told the husband that "as the year was coming to an end, so was their married life."

(58) In this view of the matter I hold that the wife has been in desertion qua the respondent husband, since 28-9-79 and the respondent husband was also entitled to a decree of divorce on the ground of desertion by the appellant wife.

(59) In *Bipinchandra Shah v. Prabhavati*, , it has been said, approving 1924 p 194 at 199 B, that the desertion is a course of conduct. Ex. P-1 coupled with the evidence of the respondent husband clearly brings out the course of conduct. In my view Ex. P-1 also brings out the nature and temperament of the appellant wife, and if anything, it is even more inflexible than that which was noted by the Supreme Court in *Dastane v. Dastane*, .

(60) For the aforesaid reasons, I affirm the judgment and decree of Additional District Judge. Delhi, dated 23rd November, 1984 whereby the marriage between the parties was dissolved under Section 13(l)(ia) and (ib) of the Hindu Marriage Act.

(61) The parties shall bear their own costs of the appeal.