

Calcutta High Court (Appellate Side)

Dr. Braja Gopal Bag vs Smt. Sharmistha Bag on 11 September, 2009

Author: Bhaskar Bhattacharya

No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Appellate/Revisional/Civil Jurisdiction

Present:

The Hon'ble Mr. Justice Bhaskar Bhattacharya

And

The Hon'ble Mr. Justice Prasenjit Mandal

F.A. No. 49 of 2007

Dr. Braja Gopal Bag  
Versus  
Smt. Sharmistha Bag

For the Husband-Appellant:

Mr. Piyush Chaturvedi,  
Mr. S.C. Karar,  
Mr. Asit Baran Ghosh,  
Ms. Rita Sinha.

For the Wife-Respondent:

Mr. Sukumar Bhattacharya,

Mr. Sukanta Datta, Ms. Piyali Shaw.

Heard on: 16.07.2009.

Judgment on: 11th September, 2009.

Bhaskar Bhattacharya, J.:

This first appeal is at the instance of a husband in a suit for divorce on the ground of cruelty and is directed against the judgment and decree dated 5th August, 2005 passed by the learned Additional District Judge, First Court, Midnapore, in Matrimonial Suit No.189 of 2001 thereby dismissing the said suit.

Being dissatisfied, the husband has come up with the present appeal. The appellant before us filed a suit being Title Suit No.189 of the 2001 in the Court of the learned District Judge, Midnapore for divorce and the case made out by the appellant may be summed up thus:

(a) The parties were married according to Hindu rites and customs on 19th July, 1999 in the house of the father of the respondent at Bidhan Nagar Town, District- Midnapore within the territorial jurisdiction of the Court.

(b) The appellant was a student of Midnapore College from which he graduated with Honours in Chemistry in the year 1986 and the father of the respondent at the relevant time was a lecturer of that college in the Department of Chemistry and the appellant being a brilliant student, the father of the respondent used to like him.

(c) After graduation, the appellant got his Postgraduate education from I.I.T., Kharagpur and thereafter, he went to Bangalore and got his Ph.D. degree therefrom and ultimately, he went to Germany for his Postdoctoral Research.

(d) Throughout such a long career of the appellant, he kept himself in touch with the father of the respondent and the respondent's father also used to keep regular contact with the appellant.

(e) In June, 1999, the appellant came from Germany on leave and met the respondent's father in July, 1999. He was about to complete his Postdoctoral Research. The father of the respondent discussed with the appellant about his future plan and programme and advised him to get married inasmuch as it was the right age of his marriage.

(f) The appellant casually disclosed that he was yet to take a decision over the matter. Besides, there being no negotiation over the matter and his stay in India was for a limited period, as a result, it was quite impossible on his part to get himself prepared for the marriage.

(g) The father of the respondent suddenly approached the appellant to marry his daughter and the proposal was so sudden and so unexpected that the appellant was rather spellbound which the respondent's father took to be his consent and then proceeded with the arrangement of the marriage at a hot haste and the appellant had no other alternative but to agree to such proposal.

(h) Accordingly, the marriage in between the parties took place on 19th July, 1999. After the marriage, it was detected and noticed that the respondent was of cold temperament and introvert in nature. After marriage, the appellant stayed for a very limited period in India and by this time, he had to go to his native place and ultimately, had to leave for Germany on 30th July, 1999 and there was hardly any scope for free mixing and exchange of idea with the respondent.

(i) Subsequently, after getting her passport, visa, etc., the respondent arrived in Germany on 26th September, 1999. The appellant was eager to get warm company of his newly wedded wife and he had all his desire, craving and eagerness for such company and on her arrival he was delighted but most unfortunately, it was noticed that the respondent kept herself quiet in an indifferent attitude and in off mood and had very cold approach towards the appellant. She had no attraction at all towards the appellant and all along had the intention to avoid the appellant.

(j) Initially, the appellant thought that such attitude might be due to her homesickness which would be temporary one and the appellant tried his best to keep the respondent in good humour but all in vain.

(k) Gradually, it became constant headache for the appellant to pass his time with the respondent. She used to act like a machine, full of mechanism and artificial one. She had no sexual urge and used to remain quiet and cold at the time of cohabitation and practically she used to take the matter to be physical torture upon her and tried to avoid the appellant.

(l) The appellant wanted to know the cause and the reason thereof and after long silence, she ultimately replied that she had no urge of feeling in sex and had got no attraction towards the appellant and for his company and the matter of sharing bed with him to be nothing but physical torture upon her. The appellant wanted to consider the matter sympathetically and approached her to go to any doctor for consultation but the respondent flatly refused and turned down the proposal.

(m) Thereafter, the respondent disclosed that she was born as a premature baby and had been suffering from various ailments and it was impossible on her part to lead a normal conjugal life with the appellant and she advised the appellant to go for second marriage for his sexual satisfaction.

(n) The life of the appellant became meaningless and by this time, he finished his work and came back to India and stayed at his in-law's place along with the respondent and gradually narrated everything to the members of her family but none took the matter seriously.

(o) On her return, the respondent started avoiding the appellant completely and she used to come before the appellant only in the presence of a third party. She used to come to bed late and to sleep with her mother most of the nights.

(p) That the entire matter became the cause of tremendous mental shock and agony for the appellant and he had undergone great mental torture. His sincere endeavour to get the respondent examined by any doctor failed inasmuch as the respondent had turned down such proposal and flatly refused to go to any doctor. The parents of the respondent, however, supported her activity and on the contrary, claimed that their daughter was quite normal.

(q) The appellant expressed his discomfort to stay at his in-law's place and thereafter, the father of the respondent arranged for their staying at a rented accommodation at Rangamati and the appellant went there to live along with the respondent.

(r) By this time, the appellant got his service at Vidyasagar University, Midnapore and joined as a Reader, in the Department of Chemistry and Chemical Technology on 29th September, 2000. The appellant expected that the respondent must be happy over the matter and the appellant also had desired that he would celebrate the occasion jointly with the respondent but the respondent flatly refused to do so and she left for her aunt's place.

(s) Day by day the behaviour, attitude and activity of the respondent caused terrific mental shock and extreme deprivation of the normal life of the appellant and the same changed the entire life and meaning of life of the appellant.

(t) The appellant left no stone unturned to get adjusted with the respondent but was unsuccessful. He even wanted that the respondent might simply give him company but nothing could change her attitude and she ultimately left the house of the appellant for good on 22nd November, 2000 and started living with her parents. Hence the suit.

The suit was contested by the wife by filing written statement thereby denying the material allegation made in the application for divorce and the case of the respondent may be summed up thus:

(1) The appellant went for Germany for his Postdoctoral Research in the year 1996 and prior to leaving for Germany, the appellant came to meet with the respondent and her father and stayed for two or three days in the house of the respondent. In the month of July, 1999, the appellant returned from Germany on leave and met with the respondent's father. On 11th July, 1999, the appellant came to the respondent's house and for the first time, approached the respondent's mother to marry the respondent. As the respondent and her parents knew the appellant for quite a longtime and also the career of the appellant was praiseworthy, they agreed to the proposal of the appellant and went to his native place to fix a date of the marriage after discussion with his parents. At that time, the respondent was a student of B.Ed. (Part-II) and her father requested the appellant and his parents to celebrate the marriage of the parties after completion of the respondent's Part-II examination but the appellant and his parents did not want to wait for 6-7 months and on the face of their pressure, the parents of the respondent agreed within a week for fixing the date of the marriage. (2) After the marriage, the appellant spent 10 days in his father-in-law's house without going to his native village and in those days, the appellant repeatedly requested the parents of the respondent to make arrangement for respondent's visit to Germany. At that time, neither the respondent nor her family members could understand the motive of the appellant. The appellant went to Germany on 30th July 1999 and within a month the respondent also joined him there.

(3) The respondent had new hope in her heart to lead a happy conjugal life but on reaching Germany she found the appellant as extremely selfish, absolutely dominating, arrogant and irritating person. In abroad, the respondent was fully dependant upon the appellant in every respect but his inconsiderate and unsympathetic attitude hurt the respondent. Now and then, the appellant insulted the respondent by taking the name of her parents and abused her. If the respondent wanted to raise any protest, the appellant disclosed that the only reason for his hasty decision to marry and to bring the respondent in Germany was to get double amount of money for stipend from the authority concerned showing themselves as married couple.

(4) The respondent tried her level best to adjust with the appellant in every manner but unfortunately she could not understand what her husband wanted from her. The allegation about the respondent's cold behaviour at the time of cohabitation or her inability to fulfil the appellant's sexual urge are all false and frivolously framed for the purpose of the present suit. The appellant never complained about those things, on the other hand, regarding the planning for a family he never paid attention towards the wish and aspiration of the respondent.

(5) As such, the question of her refusal to consult with a doctor did not arise at all. On returning from Germany during the appellant's stay at his in-law's house, he compelled the respondent to understand the fact that as he was unsettled in his life till then, it became unwise to involve in a family. For the sake of the appellant's future, the respondent suppressed her secret desire in her heart.

(6) After returning from Germany, seven months thereafter, on sincere effort of the father of the respondent, the appellant got the job of Reader in Chemistry in the Vidyasagar University on 29th September, 2000 and took rented accommodation at Rangamati nearer to University Campus. Prior to getting of the said service, the appellant stayed with the respondent at his in-law's house and not for a single day he brought the respondent to her matrimonial house. The respondent subsequently came to know that the appellant's educational qualification being much higher than that of the other members of the family, he could not adjust with them. (7) After getting the service of Reader in the Vidyasagar University, the behaviour of the appellant towards the respondent became completely changed. The constant insult and ill-treatment upon the respondent made her life almost miserable. On trivial issue, the appellant quarrelled with the respondent and compelled her to obey his every direction. Now and then, the appellant used to tell the respondent that anytime he could get seven/eight lakh rupees by marrying another woman and in this way, threatened to divorce the respondent. The mental torture upon the respondent increased when the appellant expressed that the father of the respondent, by creating pressure upon him, compelled him to marry the respondent. The respondent tolerated all his cruel and selfish behaviour for the sake of family peace.

(8) The appellant's service in University and greed for money made him self-centered, selfish and brut. He began to create physical torture upon the respondent and after being appointed as a Reader he took the rental premises and shifted there from his in-law's house. At that time, he also brought his mother. The appellant's mother used to support her son and along with her son, she used to inflict torture upon the respondent by her words and behaviour and made the respondent understood that if she could give the marriage of her son elsewhere, she could get seven/eight lakh rupees. She further disclosed that the respondent was not matched for the appellant and she should release her son from the marital tie. When the respondent protested against such behaviour they became merciless and the respondent was subjected to inhumane physical torture. Ultimately, on 22nd November, 2000, the appellant and her mother drove away the respondent with demand of dowry after committing inhumane physical torture upon the respondent and all her belongings were snatched away. From that date, the respondent was residing in her father's house with help of her father.

(9) Even thereafter, the respondent tried to contact with the appellant in every day over telephone when the appellant refused to talk with the respondent and wanted not to keep any relation with her. The respondent was always ready to return to the appellant's house. The allegations about the respondent regarding matrimonial offence are false and baseless. At the time of hearing of the suit, the appellant himself, one Bankim Behari Sasmal, the father-in-law of the brother of the appellant and one Kanailal Das, the President of the Bidhannagar Development Society, gave evidence in support of the petition for divorce while the respondent herself and her parents as well as one Kushadhukh Pradhan, neighbour of the respondent, deposed in opposing the petition.

As indicated earlier, the learned Trial Judge, by the judgment and decree impugned herein, was pleased to dismiss the suit.

Being dissatisfied, the husband has come up with the present appeal. Therefore, the first question that arises for determination in this appeal is whether the appellant has been able to prove the allegation made in the application for divorce regarding the sexual coldness of the wife.

It appears from record that the learned Trial Judge referred the respondent for examination by a medical board consisting of a Gynecologist, a Psychiatrist and any other medical expert as thought fit by the Superintendent, Midnapur District Medical College and Hospital, for the purpose of giving report as to whether the wife was suffering from any psychological disability which is likely to render her incapable of leading a normal conjugal life. In compliance of such order, the Superintendent, Midnapur District Medical College and Hospital constituted a board and the said board after examining the respondent submitted a report to the Court. In spite of giving opportunities to the parties to give objection to the report, none submitted any objection and no prayer was also made for cross-examining the doctors comprising the said board.

The board so constituted, consisting of a Physician, a Gynecologist and a Psychiatrist, after examining the respondent found no abnormality or disability. The Gynecologist has noted in his observation that she is physically capable of sexual intercourse and the secondary sex character was well developed. The Psychiatrist has noted in his finding that there is no psychological disorder which can hamper her conjugal life. The combine opinion of the board is as follows:

"On examination there is nothing to suggest or deny that the said Sarmistha Bag is incapable to lead conjugal life. However, impotence Quode Hanci, i.e., apathy to particular person cannot be overruled ordinarily".

From the said report of the experts accepted by the parties, there is no dispute that the respondent is a normal lady having neither any physical disability nor mental deficiency which can stand in her matrimonial life. Mr. Chaturvedi, the learned counsel appearing on behalf of the appellant, however, vehemently contended before us that in this case, it is established that the wife has apathy towards his client, as a result, she is unable to cooperate with the appellant at the time of sexual cohabitation although she might not face this difficulty if she was married to any other person of her choice. According to Mr. Chaturvedi, for such apathy towards the appellant, his client is unable to enjoy the bliss of the married life and such act on the part of the wife amounts to legal cruelty. In this connection, Mr. Chaturvedi relies upon the following decisions in support of his contention that if for the defect of any of the spouses, the other one is deprived of the sexual enjoyment which is the foundation of the married life, the Court should grant a decree for divorce:

- 1) H vs. H reported in AIR 1932 Bom 279;
- 2) Dr. Srikant Rangacharya Adya vs. Sm. Anuradha reported in AIR 1980 Karnataka 8;

3) T.V.R Tatachari vs. Balkisnan Nijhwawan reported in AIR 1973 Delhi

200.

There is no dispute with the proposition of law that even if a party to marriage is otherwise healthy but intentionally abstains from sexual intercourse with the other spouse, such act on the part of the former is a cruelty upon the latter and the latter can get a decree for divorce on such intentional act on the part of the former. Even if the former unintentionally refrains from such act without any just cause, such unintentional act of the former will be a cruelty upon the latter and the latter will be entitled to get a decree for divorce for such unintentional act for the law does not require that the cruelty complained of should be intentional. (See: Suman Kapur vs. Sudhir Kapur reported in AIR 2009 SC 589). For instance, a wife may prefer her employment to giving company to her husband against his will for which she is posted at a distant place although she has no ill feeling against her husband and in spite of her love and sympathy towards her husband, she is unable to leave the job because she does want to be financially dependent upon her husband despite the fact that the income of the husband is more than sufficient to maintain the family and he never neglected to maintain the wife in the past. In other words, if a wife prefers self-dependency at the cost of conjugal relation against the wish of the husband who has been proved to be a faithful and caring one and against whom there is no allegation of negligence to maintain the wife, resulting in deprivation of her company to the other, the latter may allege cruelty against the former in spite of the fact that there is no intention of the former to hurt the latter.

But the position will be totally different when due to the wrong on the part of one of the spouses committed against the other, it becomes impossible for the other to co-operate with or believe the former, and in such a situation, the errant spouse cannot take advantage of his own wrong and complain against the other for non-co-operation.

Applying the aforesaid principles to the facts of the present case, we find that in the petition for divorce, the husband made the allegation that due to premature birth of the wife, she was suffering from various ailments and thus, it was not possible for her to lead normal conjugal life and that the wife herself suggested that the husband should contact further marriage for sexual satisfaction. Such allegation has been totally denied by the wife and proved to be false from the report of the Medical Board. From Exbt.- 2, the letter of the appellant to the secretary of the Bidhannagar Development Society, it appears that the husband in writing complained to him that the wife was "lacking normal female character and she occasionally refused to cohabit with" him. He has further alleged in that letter that the wife refused to stay with him in Rangamati and was staying with her parents and "such fact caused him to bring his old mother to his residence in spite of so many hazards of his native place". The wife on the other hand alleged that the mother of the husband came to the rented house in the month of October, 2000 and she used to taunt her alleging that they had been cheated due to the fact that her son had voluntarily married as a result he could not get any dowry and on November 22, 2000 she was driven away from the rented house at the instance of the mother-in-law and the husband. In spite of such allegation against the mother of the husband, she did not come forward to deny such allegation or to face cross-examination although apart from the parties to the suit, she was the only third party present on the date of departure of the wife.

In our view, the husband deliberately made false statement in the letter to the secretary of the said society regarding the wife and disclosed distorted version of the fact that his mother came after the departure of the wife. We fail to appreciate the taste of the husband who is a Reader of a University making false complaint against his wife and the father-in-law who was also his teacher before the secretary of the said society which had no role to play in resolving the disputes between the parties. By making such false allegations before public, he has betrayed the confidential relation of the parties. The wife has denied all the allegations of the husband and has also subjected herself before the medical board for facing false allegations of the husband.

In our opinion, the learned Trial Judge has rightly disbelieved the allegations of the husband who, as it appears from record, became arrogant after getting the job of the Reader of the university although till that day, he was unemployed and was living in the house of his father-in-law who loved him as if he was his own child.

Even if we assume for the sake of argument that the wife was impotent *quode hanci* towards the appellant, as contended by Mr. Chaturvedi, it is the husband who is responsible for that and he cannot take advantage of his own wrong. If a husband by his cruel behaviour has become a horrifying object in the eye of the wife, as a result, she is unable to respond to the sexual desire of the husband to his satisfaction, it is for the husband to rectify his defect so that the wife can regain confidence in him and fully surrender to him. After all, the urge of sex emanates from one's mind and if one expects full satisfaction of sex through one's spouse, one must take care to build a temple of love where both the ones should be the votary of the other.

According to the present system of marriage prevailing in this country where a daughter is required to leave her family and embrace the family of the husband as her own, the primary duty is upon the husband and the members of his family first to make her comfortable in the new environment so that neither does she feel the absence of her parents who brought her up till the other day nor is any disparity in behaviour felt by her in the changed situation; if that duty is discharged on the part of the husband and the members of his family and in spite of that the wife does not respond, one can blame the wife alleging non-co- operation.

In this case, there was no problem so long the husband was unemployed and had been staying in his father-in-law's house after returning from Germany but the moment he got the job of the Reader in the University on September 29, 2000 and took a rented house and the mother-in-law arrived in such rented house, the trouble started. The mother-in-law made it plain by her behaviour that her son had been cheated as he married the respondent without taking any dowry and within one month of the arrival of the mother-in-law in the rented accommodation, the respondent was compelled to leave the house and take shelter in her father's house. The husband did not feel the necessity of bringing the wife back and instead of that levelled untrue allegations against the wife of "lacking normal female character" before the Development Society by further making false statement that his mother arrived only after the departure of the wife. From the aforesaid facts, the learned Trial Judge rightly disbelieved the allegations of the husband that she was non-co-operative at the time of sexual cohabitation and we do not find any reason to come to a different conclusion.



We now propose to deal with the decisions cited by Mr. Chaturvedi. In the case of Mrs. Rita Nijhawan v. Shri Balkishan Nijhawan (supra), the Division Bench of the Delhi High Court was hearing an appeal preferred against an order of the learned Single Judge of that Court affirming the order of the Additional District Judge, Delhi by which the application of the appellant-wife under Section 12 (1) (a) of the Hindu Marriage Act, 1955, for annulment of the marriage with the respondent husband by a decree of nullity on the ground of impotency or in the alternative for grant of a decree for judicial separation under Section 10 (1) (a) and (b) of the Act, on the ground of desertion and cruelty, was dismissed. While hearing such appeal, the Division Bench overruled the contention of the wife that the husband was impotent so as to annul the marriage by a decree under Section 12 (1) (a) of the Act. However, while considering the question whether due to refusal on the part of the husband to have sexual intercourse with the wife, the case of cruelty was proved so as to give the alternative relief of judicial separation, the Division Bench made the following observations which were strongly relied upon by Mr. Chaturvedi:

"In the present case the marriage took place in 1954. Barring the pregnancy in 1958 which according to the appellant was the result of part improvement, right from the day of marriage till 1964, there has never been any normal sexual life, and the respondent has failed to give sexual satisfaction. The marriage has really been reduced to a shadow and a shell and the appellant has been suffering misery and frustration. In these days it would be unthinkable proposition to suggest that the wife is not an active participant in the sexual life and, therefore, the sexual weakness of the husband which denied normal sexual pleasure to the wife is of no consequence and therefore, cannot amount to cruelty. Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality. It must be recognised that nothing is more fatal to marriage than disappointments in sexual intercourse."

In that case, the husband was sexually weak and in fact was unable to give any satisfaction to the wife because of partial impotency and ultimately, refrained from any sexual activity to avoid further humiliation. In the case before us, the marriage was consummated, the parties lived together as husband and wife but the grievance of the husband is that he was not getting full satisfaction because the wife was "mechanical" at time of cohabitation. In other words, according to the husband, the vigorousness of the sexual activity expected by him from his wife is absent in her. In our country, the legislature has incorporated the ground of cruelty as one for divorce and according to law laid down by the Supreme Court wilful deprivation of a spouse to have sexual intercourse amounts to cruelty on the part of the other. The sexual intercourse in this connection means the normal sexual intercourse between the parties. But that does not mean that a party will be permitted to allege that although there is sexual intercourse, yet, as the other spouse is unable to satiate him up to his expectation, it will be harmful to live with that spouse enabling the party to get a decree for

divorce. If we accept the contention of Mr. Chaturvedi, the effect will be disastrous and the peace and security of the life of the individual and the society in general, which is the object of marriage, would be totally frustrated. The matrimonial Courts will be flooded with frivolous divorce petitions of the unfaithful spouses on the allegation that their counterparts are unable to give them the "expected satisfaction". Unbridled sexual urge, it is said, is like the voracity of the fire, and is unquenchable. The object of marriage is to regulate such urge through discipline for the benefit of a healthy society and the aim of the Hindu Marriage Act is to achieve that goal through monogamy. We, thus, find that the abovementioned decision is of no assistance to the appellant.

In the case of Dr. Srikant Rangacharya Adya vs. Smt. Anuradha (supra), the Division Bench of the Karnataka High Court was dealing with an appeal by the unsuccessful husband who wanted to escape from the sacred bond of marriage on the grounds which, unfortunately for the appellant, were held to be attributable to him and not to the respondent. The Trial Court had dismissed the petition in pursuance of the findings recorded by it that the appellant had failed to establish that non-consummation of the marriage was due to the impotency of the respondent and further, nor was it due to any repulsive and non-co-operative conduct on the part of the respondent to effectuate the sexual intercourse. Before the Trial Court as well as before the High Court, it was not disputed that there was no consummation of the marriage and it was also conceded in the Trial Court that the character of the respondent was not at all assailed in the proceedings. Before High Court also, nothing was said about the character of the respondent. The Trial Court, on appreciation of the evidence, had found that the non-consummation of the marriage was not due to any impotency or repulsive and non-co-operative conduct on the part of the respondent. It had also been found by the Trial Court that the appellant could not effectuate sexual intercourse even though he tried one or two times during the period prior to the filing of the petition. The appellant had also admitted in his evidence that in spite of there being several opportunities for him to have sexual intercourse with the respondent, he did not try to do so. The High Court dismissed the appeal and by invoking the provision contained in Section 23A of the Act granted a decree for divorce in favour of the wife on the ground of cruelty of the husband. We fail to appreciate how the said decision can be of any avail to the appellant. As in the case before us, the wife does not want divorce and wants to resume the relation by condoning the cruel act of the husband, we find no relevancy of the said decision to the facts of the present case.

In the case of H vs. H (supra), the Bombay High Court was considering a case under Section 19 of the Divorce Act where the husband was not impotent as regards all women but was found to be so only towards his wife. In such circumstances, the High Court was of the view that the marriage not having been consummated, it was a fit case of annulment of the same. We fail to appreciate how the said decision can have any application to a case where the marriage has been duly consummated and they lived together as husband and wife for more than one year and as such, the wife cannot be said to be impotent, at any rate, within the meaning of the Hindu Marriage Act. As pointed out by the Supreme Court in the case of Yuvraj Digvijay Singh vs. Yuvrani Pratap Kumari reported in AIR 1970 SC 137, a party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility. Merely because, one of the spouses complains non-satisfaction in sexual intercourse, such allegation cannot make other an impotent when normal intercourse is admitted. The said decision, thus, is of no avail to the appellant.

Mr. Chaturvedi, as a last resort, made a desperate submission by contending that even if his client failed to prove the case made in the petition for divorce, this matrimonial Court should grant a decree for the failure on the part of the wife to prove her baseless allegation of demand of dowry in the written statement. In support of his contention, Mr. Chaturvedi, relied upon a Division Bench decision of this Court in the case of Debabrata Chakraborty vs. Rina Chakraborty reported in 2009(1) CHN 893. We do not for a moment dispute the proposition of law that a matrimonial Court can grant a decree for divorce even in a case where the allegation made in the plaint is not proved if it is established that the defending spouse in the written statement has made baseless false allegation against the moral character of the other spouse provided such allegation in the written statement is not merely "unproved" but clearly "disproved" from the materials on record. In this case, the wife stated in the written statement that the husband and his mother by their words and behaviours sufficiently indicated that by the marriage of the appellant with the respondent without taking any dowry, the former has been cheated because by marrying somebody else, he could easily get Rupees seven to eight lakh as dowry. We have already pointed out that the mother of the appellant did not face the witness box to deny her statement. The wife never alleged that the husband made direct demand of any dowry from her parents. If a husband and his mother lament in the presence of the wife about such "deprivation" resulting in driving out the wife from the matrimonial home, such act amounts to more heinous than direct demand of dowry from the parents. We are of the view that such allegation of the wife has been established in the facts and circumstances of the present case and thus, no question of granting a decree for divorce on the basis of the allegation made in the written statement arises.

On consideration of the entire materials on record, we, thus, find that the wife was driven away by the husband with tainted motive without any just reason and that the wife was compelled to leave the matrimonial home due to mental torture of severe form.

We, therefore, find no merit in this appeal and the same is dismissed by affirming the judgment and decree passed by the learned Trial Judge.

In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.) I agree.

(Prasenjit Mandal, J.)